



भारत का राजपत्र

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No. 52]

NEW DELHI, DECEMBER 23—DECEMBER 29, 2012, SATURDAY/PAUSA 2—PAUSA 8, 1934

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

(सतर्कता विभाग)

नई दिल्ली, 13 दिसम्बर, 2012

का. आ. 3649.—विशेष न्यायालय (प्रतिभूति संव्यवहार संबंधी अपराध विचारण) अधिनियम, 1992 की धारा 3 की उप-धारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदद्वारा, विशेष न्यायालय (प्रतिभूति संव्यवहार संबंधी अपराध विचारण) अधिनियम, 1992 के अंतर्गत श्री जयंती प्रसाद (आईए एंड एएस: 1986) को 67,000—79,000 रुपए के वेतनमान में प्रतिनियुक्ति के आधार पर तीन वर्ष की अवधि के लिए या अधिकारी के कार्यालय के समाप्त तक या अंगाले आदेशों तक, इनमें से जो भी पहले हो, अधिकारी के नियुक्त करती है।

[फा. सं. 22/4/2003—सतर्कता (खण्ड-III)]
मृत्युंजय सिंह, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

(VIGILANCE SECTION)

New Delhi, the 13th December, 2012

S.O. 3649.—In exercise of the powers conferred by Sub-section (i) of Section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities Act, 1992, the Central Government hereby appoints Shri Jayanti Prasad (IA & AS : 1986) to the post of Custodian under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on deputation basis in the pay scale of Rs. 67,000—79,000 for a period of three years w.e.f. the date of assumption of charge of the post or till the office of the Custodian is wound up or till further orders whichever is the earliest.

[F. No. 22/4/2003/VIG (Vol. III)]
MRITUNJAY SINGH, Under Secy.

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 28 दिसम्बर, 2012

(आयकर)

का. आ. 3650.—जबकि केन्द्र सरकार ने आयकर अधिनियम, 1961 (1961 का 43) (इसके आगे उक्त अधिनियम के रूप में उल्लिखित) की धारा 80ज्ञक की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए । अप्रैल, 1997 को आरंभ तथा 31 मार्च, 2002 को समाप्त हो रही अवधि के लिए संख्या का.आ. 193(अ), दिनांक 30 मार्च, 1999 तथा संख्या का.आ. 354(अ) दिनांक 1 मार्च, 2006 द्वारा वाणिज्य एवं उद्योग मंत्रालय (औद्योगिक नीति एवं संवर्धन विभाग) में भारत सरकार की अधिसूचनाओं द्वारा औद्योगिक पार्क के लिए एक योजना निर्मित एवं अधिसूचित की है;

और जबकि मैसर्स आईलैब्स हैदराबाद टैक्नालॉजी सेंटर प्राइवेट लि. जिसका पंजीकृत कार्यालय आईलैब्स सेंटर, भवन सं. 3, प्लाट सं. 18, साप्टवेयर यूनिट लेआउट, माधपुर, हैदराबाद-500081 है, प्लॉट सं. 18, साप्टवेयर यूनिट लेआउट, कस्बा/तहसील-माधपुर, जिला-हैदराबाद, आंध्र प्रदेश-500081 में एक औद्योगिक पार्क विकसित कर रहा है;

और जबकि केन्द्र सरकार ने वाणिज्य एवं उद्योग मंत्रालय के दिनांक 3-3-2009 के पत्र सं. 15/37/2006-आईडी-II द्वारा उसमें उल्लिखित शर्तों एवं निबंधनों और वाणिज्य एवं उद्योग मंत्रालय के दिनांक 10-4-2012 के पत्र सं. 15/37/2006-आईडी-II द्वारा तदनन्तर संशोधन के अधीन उक्त औद्योगिक पार्क का अनुमोदन किया है;

अतः अब, उक्त अधिनियम की धारा 80ज्ञक की उप-धारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा इस अधिसूचना के अनुबंध में उल्लिखित शर्तों एवं निबंधनों के अधीन आईलैब्स हैदराबाद टैक्नालॉजी सेंटर प्राइवेट लि., हैदराबाद द्वारा विकसित एवं अनुरक्षित तथा प्रचालित किए जा रहे उपक्रम को उक्त खंड (iii) के प्रयोजनार्थ एक औद्योगिक पार्क के रूप में अधिसूचित करती है ।

अनुबंध

शर्तों एवं निबंधनों, जिन पर मैसर्स आईलैब्स हैदराबाद टैक्नालॉजी सेंटर प्राइवेट लि., हैदराबाद को एक औद्योगिक पार्क की स्थापना के लिए भारत सरकार का अनुमोदन प्रदान किया गया है ।

I. (i) औद्योगिक उपक्रम का नाम

आईलैब्स हैदराबाद टैक्नालॉजी सेंटर प्राइवेट लि., हैदराबाद

(ii) प्रस्तावित अवस्थान

प्लॉट सं. 18, साप्टवेयर यूनिट लेआउट, कस्बा/तहसील-माधपुर, जिला-हैदराबाद, आंध्र प्रदेश-500081

(iii) औद्योगिक पार्क का क्षेत्र

97.226 मीटर

(iv) प्रस्तावित कार्यकलाप

एन आई सी कोड के साथ औद्योगिक कार्यकलाप की प्रकृति

एनआईसी कोड					विवरण
क्रम सं.	धारा	प्रभाग	समूह	श्रेणी	
क	7	75	—	—	संप्रेषण सेवाएं
ख	8	89	892	—	डाटा प्रसंसाधन, साफ्टवेयर विकास और कम्प्यूटर परामर्शी सेवाएं
ग	8	89	893	—	व्यवसाय और प्रबंधन परामर्शी कार्यकलाप
घ	8	89	894	—	वास्तुशिल्पीय एवं इंजीनियरिंग और अन्य तकनीकी परामर्शी कार्यकलाप
ड	8	89	895	—	तकनीकी परीक्षण एवं विश्लेषण सेवाएं
(v)	औद्योगिक उपयोग के लिए चिह्नित विनियोज्य क्षेत्रफल की प्रतिशतता				
(vi)	वाणिज्यिक उपयोग के लिए चिह्नित विनियोज्य क्षेत्र की प्रतिशतता				
(vii)	औद्योगिक इकाईयों की न्यूनतम संख्या				
(viii)	प्रस्तावित कुल निवेश (राशि रुपए में)				
(ix)	औद्योगिक प्रयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में)				
(x)	औद्योगिक प्रयोग के लिए निर्मित स्थान पर निवेश सहित अवसंरचना विकास पर निवेश (राशि रुपए में)				
(xi)	औद्योगिक पार्क के आंश्व होने की प्रस्तावित तिथि				

2. औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50 प्रतिशत से कम नहीं होगा। किसी औद्योगिक पार्क के मामले में जो औद्योगिक उपयोग के लिए निर्मित स्थान प्रदान करता है, औद्योगिक स्थान के निर्माण की लागत सहित अवसंरचना विकास पर न्यूनतम खर्च कुल परियोजना लागत के 60 प्रतिशत से कम नहीं होगा।

3. अवसंरचना विकास में सदके (पहुंच मार्ग सहित), जल आपूर्ति एवं नालियां, सार्वजनिक बहिःस्त्रावी प्रशोधन सुविधा, टेलीकाम नेटवर्क, बिजली उत्पादन और वितरण, वातानुकूलन एवं ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप के लिए सामान्य उपयोग के हों जो अभिज्ञेय हैं और वाणिज्यिक शर्तों पर प्रदान किए जाते हैं।

4. का.आ. 354(अ), दिनांक 1 अप्रैल, 2002 के पैरा 6 के उप-पैरा (ख) में दी गई सारणी के कॉलम (2) में उल्लिखित कोई भी एकल इकाई किसी औद्योगिक पार्क के विनियोज्य औद्योगिक क्षेत्र के पचास प्रतिशत से अधिक पर कब्जा नहीं करेगा। इस प्रयोजन के लिए एक इकाई का अर्थ एक और उससे अधिक राज्यों या केन्द्रीय कर कानून के प्रयोजनार्थ कोई अलग और पृथक इकाई है।

5. विदेशी निवेश संवर्धन बोर्ड या भारतीय रिजर्व बैंक या उस समय लागू किसी कानून के अन्तर्गत विनिर्दिष्ट किसी प्राधिकारी द्वारा विदेशी प्रत्यक्ष निवेश या अनिवासी भारतीय निवेश के लिए अनुमोदन सहित आवश्यक अनुमोदन लागू नीति एवं कार्यप्रणाली के अनुसार अलग से लिया जाएगा।

6. अधिनियम के अन्तर्गत कर लाभ इस अधिसूचना के पैरा 1 (vii) में उल्लिखित इकाईयों की संख्या के औद्योगिक पार्क में स्थापन के बाद ही लिया जा सकता है।

7. मैसर्स आईलैब्स हैदराबाद टैक्नालॉजी सेंटर प्राइवेट लि., हैदराबाद उस अविधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिसमें आयकर अधिनियम, 1961 की धारा 80जक की उप-धारा (4) के खंड (iii) के अन्तर्गत लाभ प्राप्त किया जाना है।

8. यदि औद्योगिक पार्क 31-3-2006 तक शुरू नहीं हुआ तो आयकर अधिनियम, 1961 की धारा 80ज्ञक की उप-धारा (4)(iii) के अन्तर्गत लाभ प्राप्त करने के लिए उस योजना के अन्तर्गत प्रयोग्यता के अधीन औद्योगिक पार्क योजना, 2008 के अन्तर्गत नया अनुमोदन अपेक्षित होगा ।

9. अनुमोदन अमान्य हो जाएगा तथा मैसर्स आईलैब्स हैदराबाद टैक्नालॉजी सेंटर प्राइवेट लि., हैदराबाद ऐसी अमान्यता के किसी अप्रत्यक्ष प्रभाव के लिए पूरी तरह जिम्मेदार होगा, यदि :

(i) जिस आवेदन के आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, उसमें गलत सूचना/मिथ्या जानकारी होती है अथवा उसमें कोई वस्तुगत सूचना प्रदान नहीं की गई है ।

(ii) यह उस औद्योगिक पार्क के अवस्थान के लिए है जिसके लिए किसी अन्य उपक्रम के नाम से पहले ही अनुमोदन प्रदान किया जा चुका है ।

10. मैसर्स आईलैब्स हैदराबाद टैक्नालॉजी सेंटर प्राइवेट लि., हैदराबाद द्वारा औद्योगिक पार्क (अर्थात् अंतरणकर्ता उपक्रम) का प्रचालन एवं अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को हस्तांतरित करने के मामले में, अंतरणकर्ता एवं अंतरिती संयुक्त रूप से उपर्युक्त अंतरण के लिए अंतरणकर्ता एवं अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति एवं संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमी सहायता इकाई को सूचना देंगे ।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क योजना, 2002 में शामिल उन शर्तों का पालन उस अवधि के दौरान किया जाना होगा जिसके लिए इस योजना के अन्तर्गत लाभ उठाए जाने हैं । मैसर्स आईलैब्स हैदराबाद टैक्नालॉजी सेंटर प्राइवेट लि., हैदराबाद द्वारा किसी शर्त के अनुपालन में असफल होने के मामले में केन्द्र सरकार उपर्युक्त अनुमोदन वापस ले सकती है ।

12. केन्द्र सरकार के अनुमोदन के बिना परियोजना प्लान में कोई संशोधन या भविष्य में अभिज्ञान अथवा आवदेक द्वारा किसी वस्तुगत तथ्य को प्रकट न करने से औद्योगिक पार्क का अनुमोदन अमान्य हो जाएगा ।

[अधिसूचना सं. 55/2012/फा. सं. 178/49/2009-आ.का.नि.-I]

सुरभि शर्मा, अवर सचिव

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 28th December, 2012

(INCOME-TAX)

S.O. 3650.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S.O. 193 (E), dated the 30th March, 1999 for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 31st day of March, 2006;

And whereas M/s. iLABS Hyderabad Technology Centre Private Ltd. having its registered office at iLABS Centre, Building No. 3, Plot No. 18, Software Units Layout, Modhupur, Hyderabad-500 081, is developing an Industrial Park at Plot No. 18, Software Units Layout, Town/Tehsil-Modhupur, District-Hyderabad, AP-500 081;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/37/2006-ID-II dated 3-3-2009 subject to the terms and conditions mentioned therein as subsequently amended vide Ministry of Commerce and Industry letter No. 15/37/2006-ID-II dated 10-4-2012;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking, being developed and being maintained and operated by M/s. iLABS Hyderabad Technology Centre Pvt. Ltd., Hyderabad, as an industrial park for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the annexure of the notification.

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. iLABS Hyderabad Technology Centre Pvt. Ltd., Hyderabad :

1. (i) Name of the Industrial unit	:	iLABS Hyderabad Technology Centre Pvt. Ltd., Hyderabad
(ii) Proposed location	:	Plot No. 18, Software Units Layout, Town/Tehsil-Madhapur, District-Hyderabad Andhra Pradesh-500 081
(iii) Area of Industrial Park	:	97.226 meters
(iv) Proposed activities	:	

Nature of Industrial activity with NIC code

NIC Code					Description
S. No.	Section	Division	Group	Class	
A	7	75	—	—	Communication services
B	8	89	892	—	Data processing, software development and computer consultancy services
C	8	89	893	—	Business and management consultancy activities
D	8	89	894	—	Architectural and engineering and other technical consultancy activities
E	8	89	895	—	Technical testing and analysis services

(v) Percentage of allocable area earmarked for Industrial use	:	90.09%
(vi) Percentage of allocable area earmarked for commercial use	:	9.91%
(vii) Minimum number of industrial units	:	05 Units
(viii) Total investments proposed (Amount in Rupees)	:	Rs. 10,465 Lakhs
(ix) Investment on built up space for Industrial use (Amount in Rupees)	:	Rs. 5,181 Lakhs
(x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees)	:	Rs. 10,000 Lakhs
(xi) Proposed date of commencement of the Industrial Park	:	March 2006

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non-resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in Para 1(vii) of this Notification, are located in the Industrial Park.

7. M/s. iLABS Hyderabad Technology Centre Pvt. Ltd., Hyderabad, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80IA of the Income-tax Act, 1961 are to be availed.

8. In case the Industrial Park did not commence by 31-3-2006, fresh approval will be required under the Industrial Park Scheme, 2008 subject to the applicability under that Scheme for availing benefits under sub-section 4 (iii) of Section 80IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. iLABS Hyderabad Technology Centre Pvt. Ltd., Hyderabad, shall be solely responsible for any repercussions of such invalidity, if :

- (i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.
- (ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. iLABS Hyderabad Technology Centre Pvt. Ltd., Hyderabad, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. iLABS Hyderabad Technology Centre Pvt. Ltd., Hyderabad fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 55/2012/F. No. 178/49/2009-ITA-I]

SURABHI SHARMA, Under Secy.

कार्यालय आयुक्त, केन्द्रीय उत्पाद शुल्क, सीमा शुल्क एवं सेवा कर

[सी.सी.एस. (पेंशन) नियमावली 1972 के नियम 74 के तहत]

भोपाल, 17 दिसम्बर, 2012

क्र. 20/2012

का. आ. 3651.—श्री प्रदीप गरुड़, अधीक्षक, केन्द्रीय सरकार सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर आयुक्तालय, भोपाल के एच्छक सेवानिवृत्ति आवेदन दिनांक 13-9-2012 को केन्द्रीय सिविल सेवा के पेंशन नियम 1972 के नियम 48 के अंतर्गत दिनांक 1-1-2013 (पूर्वाहा) से स्वीकृत किया जाता है एवं वे तदनुसार शासकीय सेवा से निवृत्त होंगे।

[का. सं. II (3)08/2010/ईटी-I]

डॉ. डी. के. बर्मा, आयुक्त

OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX

[Under Rule 74 of the CCS (Pension) Rules, 1972]

Bhopal, the 17th December, 2012

SI. 20/2012

S.O. 3651.—The application dated 13-9-2012 for Voluntary Retirement tendered by Shri Pradeep Garud, Superintendent, Customs, Central Excises and Service Tax Hqrs., Bhopal is accepted with effect from 1st January, 2013 (F.N.) under Rule 48 of CCS (Pension) Rules, 1972 and he will be retiring from Government Service accordingly.

[F. No. II(3)08/2010/Et. I]

Dr. D. K. VERMA, Commissioner

कार्यालय मुख्य आयकर आयुक्त

शुद्धि-पत्र

जयपुर, 20 दिसम्बर, 2012

का. आ. 3652.—आयकर अधिनियम, 1961 की धारा 10 के खण्ड (23सी) के उपखण्ड (vi) के तहत अधिसूचना सं. 08/2012-13 दिनांक 26-10-2012 के द्वारा दी मनिपाल युनिवर्सिटी, जयपुर को स्वीकृति दी गई थी। अधिसूचना के पैरा 1 की लाइन 3 में दी मनिपाल युनिवर्सिटी, जयपुर के स्थान पर मणिपाल यूनिवर्सिटी, जयपुर पढ़ा जाये।

[क्रमांक : मुआआ/अआआ/(मु.)/जय/10 (23सी)(vi)/2012-13/5108]

ब्रजेश गुप्ता, मुख्य आयकर आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF INCOME-TAX

CORRIGENDUM

Jaipur, the 20th December, 2012

S.O. 3652.—Vide Notification No. 08/2012-13 dated 26-10-2012 “The Manipal University, Jaipur” was approved for the purpose of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules, 1962. In Para 1, line 3 “The Manipal University, Jaipur” should be read as ‘Manipal University, Jaipur’.

[No. CCIT/JPR/Addl. CIT (Hqrs.)10(23C)(vi)/2012-13/5108]

BRIJESH GUPTA, Chief Commissioner of Income-tax

जयपुर, 20 दिसम्बर, 2012

सं. 09/2012-13

का. आ. 3653.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23सी) की उप-धारा (via) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्वारा निर्धारण वर्ष 2012-13 एवं आगे के लिये कथित धारा के उद्देश्य से “सन्तोकबा दुर्लभजी ट्रस्ट फण्ड, जयपुर” को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उप-खण्ड (23सी) की उप-धारा (via) के प्रावधानों के अनुरूप कार्य करें।

[क्रमांक : मुआआ/अआआ/(मु.)/जय/10 (23सी)(via)/2012-13/5114]

ब्रजेश गुप्ता, मुख्य आयकर आयुक्त

Jaipur, the 20th December, 2012

No. 09/2012-13

S.O. 3653.—In exercise of the powers conferred by sub-clause (via) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules, 1962 the Chief Commissioner of Income-tax, Jaipur hereby approves “Santokba Durlabhji Trust Fund, Jaipur” for the purpose of said Section for A. Y. 2012-13 and onwards.

2. Provided that the society conforms to and complies with the provisions of sub-clause (via) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/Addl. CIT (Hqrs.)10(23C)(via)/2012-13/5114]

BRIJESH GUPTA, Chief Commissioner of Income-tax

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक व्यूरो)

नई दिल्ली, 10 दिसम्बर, 2012

का. आ. 3654.—भारतीय मानक व्यूरो (प्रमाणन) विनियम, 1988 के विनियम (4) के उप-विनियम (5) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा संख्या	भाग	अनुभाग	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3883683	29-10-2012	मैसर्स आर्यन अक्वाटेक प्राइवेट लिमिटेड, प्लाट नं. डी 57, 58 एमआईडीसी तासवडे तालुका कराड जिला सतारा महाराष्ट्र	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004
2.	3843267	31-10-2012	मैसर्स श्रीराम फूड्स एंड ब्रेवरेज, गट सं. 708, गांव कनेरीबाडी, तालुका कारवरी, जिला कोल्हापुर, महाराष्ट्र-416234	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004
3.	3825366	28-9-2012	मैसर्स प्रीति प्यूर बॉटर, गट सं. 344, धाकनी, तालुका लोहा, जिला नांदेड महाराष्ट्र-431603	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004
4.	3889392	19-10-2012	मैसर्स नि सैन कॉइंस, प्लाट नं. ए-67, कागल हटकानगले, फाइब स्टार इंडस्ट्रीयल एरिया, कागल, जिला-कोल्हापुर महाराष्ट्र-416236	प्लग और सॉकेट आउटलेट 250 वोल्ट के और वर्तमान रेटें 16 एम्पियर्स तक	1293			2005
5.	3889897	21-11-2012	मैसर्स राज विशाखा एटरप्राइजेज, गट सं. 745, एपी वेलु, पुणे-सातारा रोड तालुका भोर, जिला पुणे, महाराष्ट्र-412205	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
6.	3889901	23-11-2012	मैसर्स भाबा इंजीनियरिंग प्राइवेट लिमिटेड, गट सं. 2211, तासगांव फाटा, समानी माला, मालगांव तालुका मिराज, जिला सांगली, महाराष्ट्र-416407	सिचांई उपकरण – छलनी – प्रकार का फिल्टर – विशिष्टता	12785			1994

[सं. सीएमडी/13 : 11]
बी. एम. हनोफ, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 10th December, 2012

S.O. 3654.—In pursuance of sub-regulation (5) of the Regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988 of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following Schedule :

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Section	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3883683	29-10-2012	M/s Aryan Aquatech Pvt. Ltd., Plot No. D 57, 58, MIDC Taswade, Taluka Karad, District Satara, Maharashtra	Packaged Drinking Water (Other than Packaged Natural Mineral Water)	14543			2004
2.	3843267	31-10-2012	M/s Shriram Foods and Beverages, Gat No. 708, Village Kaneriwadi, Taluka Karvir, District Kolhapur, Maharashtra-416234	Packaged Drinking Water (Other than Packaged Natural Mineral Water)	14543			2004
3.	3825366	28-9-2012	M/s Preeti Pure Water, Gut No. 344, Dhakni, Taluka Loha, District Nanded Maharashtra-431603	Packaged Drinking Water (Other than Packaged Natural Mineral Water)	14543			2004

4636 GJ/12-3

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
4.	3889392	19-10-2012	M/s Ni-San Cords, Plot No. A-67, Kagal Hatkanangale, Five Star Industrial Area, Kagal, District Kolhapur, Maharashtra-416236	Plugs and Socket Outlets of 250 Volts and Rated Current upto 16 Amperes	1293			2005
5.	3889897	21-11-2012	M/s Raj Vishakha Enterprises, Gat No. 745, A/P Velu, Pune-Satara Road, Taluka Bhor, District Pune, Maharashtra-412205	Packaged Drinking Water (Other than Packaged Natural Mineral Water)	14543			2004
6.	3889901	23-11-2012	M/s. Bhaba Engineering Pvt. Ltd., Gat No. 2211, Tasgaon Phata, Samani Mala, Malgaon, Taluka Miraj District Sangli, Maharashtra-416407	Irrigation Equipment – Strainer – Type Filters Specification	12785			1994

[No. CMD/13 : 11]

B. M. HANEEF, Scientist 'F' and Head

नई दिल्ली, 17 दिसम्बर, 2012

का. आ. 3655.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम (4) के उप-विनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि/वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भाषा स./भाग/खण्ड/वर्ष
1.	3886184	07-11-2012	संजय इण्डस्ट्रीज, 207/4, दुसरा माला, आशीर्वाद इण्ड. इस्टेट, राम मंदीर रोड, गोरेंगाव-प., मुंबई-400104	घरेलू और समान प्रयोजनों के लिए स्लिचें	भा. मा. 3854 : 1997

[सं. केप्रवि/13 : 11]

ए. एस. जामिखिंडीकर, वैज्ञानिक 'एफ' एवं प्रमुख (एम डी एम-III)

New Delhi, the 17th December, 2012

S.O. 3655.—In pursuance of sub-regulation (5) of the Regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988 the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following Schedule :

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address (Factory) of the Party	Product	IS No/Part/Sec Year
1.	3886184	07-11-2012	Sanjay Industries, 207/4, Second Floor, Ashirwad Indl. Estate, Ram Mandir Road, Goregaon – West Mumbai – 400104	Switches for domestic and similar purposes	IS 3854 : 1997

[No. CMD/13 : 11]

A. S. JAMKHINDIKAR, Scientist 'F' and Head (MDM-III)

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 3656.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्थापित हो गए हैं :—

अनुसूची

क्रम स्थापित भारतीय मानक(कों) की संख्या, वर्ष संख्या और शीर्षक	नए भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
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(1)	(2)	(3)	(4)
1. आईएस 14992 : 2012/आईएसओ 3919 : 2005 लेपित अपघर्षी – शाफ्ट सहित फ्लैप पहिए (पहला पुनरीक्षण)	—	—	अक्टूबर 2012

इन भारतीय मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चंडीगढ़, चैन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बत्तूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ पीजीडी/जी-3.5]
एस. चौधरी, वैज्ञानिक 'एफ' एवं प्रमुख (पीजीडी)

New Delhi, the 20th December, 2012

S.O. 3656.—In pursuance of Clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed has been established on the date indicated against each :—

SCHEDULE

Sl. No. & Year of the Indian Standards No. Established	No. and Year of Indian Standards, Date of Established if any, Superseded by the New Indian Standard		
(1)	(2)	(3)	(4)
1. IS 14992 : 2012/ISO 3919 : 2005 Coated Abrasives – Flap wheels with shaft (first revision)	—	—	October 2012

Copy of these Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. PGD/G-3.5]

S. CHOWDHURY, Scientist 'F' & Head (PGD)

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 3657.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक(कों) में संशोधन किया गया/किये गये हैं :—

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या एवं वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 2030 : 1989 बॉक्स पाना – विशिष्टि (द्वितीय पुनरीक्षण)	1	सितंबर 2012

इन भारतीय मानकों के संशोधन की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चैन्सी, मुम्बई, तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूर्णे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ पीजीडी/जी-3.5]

एस. चौधरी, वैज्ञानिक 'एफ' एवं प्रमुख (पीजीडी)

New Delhi, the 20th December, 2012

S.O. 3657.—In pursuance of Clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been amended on the date indicated against each :—

SCHEDULE

Sl. No. and Year of the Indian Standards No.	No. and Year of the amendment	Date from which the amendment shall have effect	
(1)	(2)	(3)	(4)
1. IS 2030 : 1989 Box Spanners – Specification (Second Revision)	1	September 2012	

Copy of this Amendment of Standards is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. PGD/G-3.5]

S. CHOWDHURY, Scientist 'F' and Head (PGD)

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 3658.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है, वह/वे स्थापित हो गया/गए है :—

अनुसूची

क्रम संख्या	स्थापति भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस/आई ई सी 62271-1 : 2007 उच्च-बोल्टता के स्विचिंगर और नियंत्रणिंगियर भाग 1 सामान्य विशिष्टियां	आई एस 12729/आई ई सी 60694 : 1966	20 दिसम्बर, 2012

इस भारतीय मानक की एक प्रति भारतीय मानक व्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चैनई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ ईटी 08/टी-44]

आर. सी. मैथूर, वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 20th December, 2012

S.O. 3658.—In pursuance of Clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued :—

SCHEDULE

Sl. No. and Year of the Indian Standard No.	No. and Year of the Indian Standards, if any, superseded by the New Indian Standard	Date of Establishment	
(1)	(2)	(3)	(4)
1. IS/IEC 62271-1 : 2007 High Voltage Switchgear and Controlgear Part I : Common Specification	IS 12729 : 2004/IEC 60694 : 1966	20 December, 2012	

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. ET 08/T-44]

R. C. MATHEW, Scientist 'F' and Head (Electrotechnical)

नई दिल्ली, 20 दिसम्बर, 2012

का. आ. 3659.—भारतीय मानक व्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है, वे स्थापित हो गये हैं :—

अनुसूची

क्रम स्थापित भारतीय मानक(कों) की संख्या, वर्ष संख्या और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि	
(1)	(2)	(3)	(4)
1. आई एस/आईसी 60079-28 : 2006 : विस्फोटी पर्यावरण भाग 28 प्रकाशीय विकिरण द्वारा उपस्कर एवं ट्रांसमिशन तंत्र की सुरक्षा	—	20 दिसम्बर, 2012	
2. आई एस/आईसी 60079-30-1 : 2007 : विस्फोटी पर्यावरण भाग 30 इलैक्ट्रिकल रोधिता लेश ताप अनुभाग 1 सामान्य एवं परीक्षण अपेक्षाएं	आई एस 14774 (Part 1)	20 दिसम्बर, 2012	
3. आई एस/आईसी 60079-30-2 : 2007 : विस्फोटी पर्यावरण भाग 30 इलैक्ट्रिकल रोधिता लेश ताप अनुभाग 2 डिजाइन, संस्थापना एवं अनुरक्षण में अनुप्रयोग की मार्गदर्शिका	आई एस 14774 (Part 2)	20 दिसम्बर, 2012	

4636 GI/12-4

(1)	(2)	(3)	(4)
4. IS/IEC 60079-31 : 2008 : विस्फोटी पर्यावरण भाग 31 एंक्लोजर “टी” द्वारा उपस्कर धूल प्रज्वलन सुरक्षा	—	20 दिसम्बर, 2012	

इन भारतीय मानकों की प्रतियाँ, भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चंडीगढ़, चैन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ ईटी 22/टी-86, टी-87, टी-88, टी-89]
आर. सी. मैथ्यू, वैज्ञानिक ‘एफ’ एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 20th December, 2012

S.O. 3659.—In pursuance of Clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :—

SCHEDULE

Sl. No. and Year of the Indian Standards No.	No. and Year of the Indian Standards, if any, superseded by the New Indian Standard	Date of Established	
(1)	(2)	(3)	(4)
1. IS/IEC 60079-28 : 2006 Explosive Atmospheres Part 28 Protection of Equipment and Transmission Systems Using Optical Radiation	—	20 December, 2012	
2. IS/IEC 60079-30-1 : 2007 Explosives Atmospheres Part 30 Electrical Resistance Trace heating Section 1 General and Testing Requirements	IS 14774 (Part 1)	20 December, 2012	
3. IS/IEC 60079-30-2 : 2007 Explosives Atmospheres Part 30 Electrical Resistance Trace heating Section 2 Application Guide for Design, Installation and Maintenance	IS 14774 (Part 2)	20 December, 2012	
4. IS/IEC 60079-31 : 2008 Explosives Atmospheres Part 31 Equipment Dust Ignition Protection by Enclosure “t”	—	20 December, 2012	

Copies of these Standard is are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. ET 22/T-86, T-87, T-88, T-89]
R. C. MATHEW, Scientist ‘F’ and Head (Electrotechnical)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 29 नवम्बर, 2012

का.आ. 3660.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 11/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-11-2012 को प्राप्त हुआ था।

[सं. एल-12012/153/1998-आई आर (बी-1)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 29th November, 2012

S.O. 3660.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workmen, which was received by the Central Government on 27-11-2012.

[No. L-12012/153/1998-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 11 of 1999

Between

Sh. Phool Chand,
C/o Sri B. P. Saxena,
426 W-2 Basant Vihar,
Kanpur.

AND

The Regional Manager,
State Bank of Bikaner and Jaipur,
Abhai Bhawan,
Frazer Road,
Patna.

AWARD

1. Central Government, Mol, New Delhi, vide notification no. L-12012/153/98/IR (B-I) dated 8-1-99, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of State Bank of Bikaner and Jaipur, Patna in terminating the services of Sh. Phool Chand from February 96 is legal and justified? If not to what relief the workmen is entitled?

3. Brief facts are -

4. It is claimed by applicant Sri Phool Chand that he is a man of 41 years of age and his qualification is M. Com. and he is resident of Kanpur. He was appointed as a temporary clerk at the bank's Kaushalpuri Branch Kanpur on 12-11-73. In three spells he worked for 171 days in a calendar year when his service were abruptly terminated by the bank without assigning any reason, notice and payment etc. After termination of the applicant, bank appointed fresh temporary hands. Later on the bank appointed him as collecting agent as from 5-8-77 at Birhana Road Kanpur. He continued to work as collecting agent from the date of his engagement as collecting agent till 9-7-86. When the applicant was verbally advised not to make any further collection but assist in the branch as a clerk. During this period from 1977 to 1986 as well beside the duties of collecting agent the claimant was required to perform clerical duties at Birhana Road Kanpur Branch for the full office hours. Thereafter the bank took clerical duties in Birhana Road Branch Kanpur after 9-7-86. Thereafter he raised an industrial dispute before ALC Kanpur on 9-6-89, but the conciliation proceedings however ended in failure and a failure report was sent to the Mol, New Delhi, and the matter was referred for adjudication by Mol, New Delhi. Non reference of the Industrial Dispute emboldened the management of the bank who continued to utilize the services of the claimant as a clerk at Birhana Road, Kanpur for the full office hours of that branch until Feb. 96. Thereafter the bank terminated the services of the applicant. Initially the applicant was paid Rs. 600 as salary in cash in the year 1986, by the manager of the bank which in course of time was raised to Rs. 1500 per month in 1994 and continued to be paid until February 1996. A receipt on plain paper over revenue stamp was obtained by the manager each month.

5. He stated that he worked continuously for more than 240 days preceding 12 calendar months from the date of termination of his services. In this way the applicant worked for the bank from 12-11-1973 until Feb 1996 for about 23 years. In this way the bank not only exploited the labor of the claimant during prime time of his life without affording him any regular employment, thus the bank has breached Section-2 (ra) as well as 25F, 25G and 25H of the Industrial Disputes Act, along with rules 76, 77 and 78 of I.D. (Central) Rules 1957. It is also stated that he was not the junior most in the bank still the bank terminated his services and allowed various persons junior to the claimant viz., Sri Ravi Chandra Shukla and Sri Mukesh Chandra Srivastava to be in their employment and lastly they were made regular and permanent employee of the bank by

posting them at bank's Transport Nagar Branch and Hasant Vihar branch of the bank at the post of Clerk-cum-Cashier. Thus the bank has also violated the provisions of Section-25G of I.D. Act read with rule 77. After his termination several persons were appointed as clerk cum cashier but no opportunity of reemployment was ever given to the claimant.

6. It is also stated the Ministry of Finance Banking Division has accepted the recommendation of the Committee wherein the cases temporary employees who have put in 240 days were considered and the management was asked to negotiate with the union. It is also stated that he is still out of job and the claimant is at such a age where he cannot get a suitable employment. Therefore he has prayed that it may be held that the action of the bank in terminating his services be held unjust, and he should be reinstated with back wages and consequential benefits.

7. Opposite party has filed written statement along with additional written statement. It is stated that the claimant has got alleged industrial dispute referred from the GOI after concealing the material fact and as such the reference is bad. He has raised industrial dispute in the year 1989, which ended in failure. It is stated that the claimant was appointed the letter of the bank from 5-8-79 to 9-8-97. His contract was terminated by the bank. Since deposit collector was appointed on contract basis hence the claim is not covered under Section-2(s) of the Act. He raised same dispute again before the authority dated 18-2-97 which was closed on 10-9-97 as Phool Chand has withdrawn the case. He subsequently raised dispute on 3rd time on the same issue which also ended in failure. Thus the claimant concealed these facts and has obtained this reference on the concealment of facts.

8. It is stated that actual date of birth of the claimant is not in the knowledge of the opposite party bank. It is an admitted fact. The claimant had worked only for the period 12-11-73 to 6-2-74 (87) days from 16-5-74 to 7-6-74 (23 days) and from 11-6-74 to 10-8-74 (61 days) thus totaling 171 days. Thus he cannot take the benefit of 240 days in continuation.

9. It is stated that he was not appointed as collecting agent but was engaged on contract basis under Vyavasaya Nidhi Scheme from 28-8-77. He was collecting agent and a collecting agent under a particular only and was being benefited under the terms of the said scheme only. Thereafter the bank suspended the said scheme with immediate effect. Consequently contract of the petitioner ceased automatically by lapse of said scheme. The benefits, emoluments which were offered to the claimant were offered on the basis of contract terms. It is wrong to say that the claimant has ever been assigned in the branch as a clerk. Thus he never performed clerical duties at Birhana Road Branch for full hours or at any time at all. Thus the bank has never terminated the services of the

claimant in Feb. 1996. It is also wrong to say that initially the claimant was paid Rs. 600 per month and later on Rs. 1500 per month. It is also wrong to allege that the receipt on plain paper over revenue stamp was ever obtained by the manager. It is also alleged that Government of India has formulated the scheme to observe that the temporary employees who worked for over 90 days, said scheme was published in all the leading news papers included in bank and all those employees who have worked for 90 days or more were given one time opportunity to apply for the job. The cutoff date was 1-1-82. It was for the claimant to have applied under the said scheme to take benefit of the said scheme. The claimant has very cleverly concealed whether he has actually applied for one time opportunity or not. Therefore the opposite party did not commit the breach of any of the sections or rules of the Act. As such claimant is not entitled for any relief.

10. Both the parties have adduced oral as well as documentary evidence.

11. Claimant has adduced himself in evidence as W.W.1 Sri Phool Chand opposite party has produced Sri Govind Hari Mishra Branch Manager as W.W. 1. No other oral evidence has been produced.

12. Claimant has produced 17 documents vide list dated 2-9-04. He has also produced original pass book of Saving Bank account. They have also produced letter paper no. 36/7-10. They have also moved an application for summoning the record alleging that paper no. 36/7-10 the original of which is in the custody of the opposite party be summoned and be produced before the court.

13. Opposite party has filed 13 documents vide list 48/1.

14. I have heard arguments at length and perused the record carefully.

15. Claimant Sri Phool Chand has stated on oath in his statement that he had worked with the opposite party with effect from November 73 to 6-2-96. In the beginning in the year 1973 to 74 he worked in the Kaushalpuri Branch and thereafter he worked at Birhana Road Branch of the bank till 6-2-96. Right from 1977 to July 86 he worked as deposit collector in Birhana Road Branch and thereafter till 6-2-96 he worked as a clerk. He used to work during the whole office hours. He has named all the officials who were working at that time like Sri H. N. Dubey and Sri Saran who were the branch managers and Sri A. K. Saxena as typist, Sri Bhavnendra Kumar as Head Cashier. He has also named the officials in sub staff who were working at that time. It is also stated that he was paid after taking a receipt on a plain paper and he was being paid Rs. 1500 per month at the time of termination.

16. He has filed paper no. 26/2-17. He has also filed paper No. 36/7-10 along with affidavit and making a

request for summoning the original which were in possession of the opposite party. It is stated that he was required by the opposite party bank to prepare statement and calculation of interest payable to the constituents of the bank under the order of the Chairman District Consumer Forum Kanpur given in a number of cases against the bank. He has given the account no. of the account holder Nanhu Mal, like SK 1313, similarly of Hira Lal and others. It is also stated that he has prepared debit and interest vouchers and they are in his hand writing.

17. I have to say that opposite was directed to produce the debit and interest vouchers of those account holders of the specific dates but the opposite party failed to produce the record alleging that the Dastry has traced the record and it was not found traceable. Considering the facts and circumstances I do not find much force in the statement and contention of the opposite party alleging that the record is not traceable. In this way a presumption can be drawn against the opposite party and it cannot be said that the papers 26/7-10 are forged one, the original of which were in the possession of the opposite party. It also bears the signature of Advocate Sri Vikas Mathur and these are in the hand writing of the claimant. If these were forged documents the opposite party could have produced Advocate Sri Vikas Mathur on their behalf who could have easily stated that these are not his signatures. It is pertinent to say that Sri Vikas Mathur was also the authorized representative on behalf of the bank in this case.

18. The claimant has also stated on oath that he used to make entries in the pass book of the account holders. He has filed one pass book in original which is paper no. 35/2. This pass book belongs to account holder Sri Anand Jaiswal. He stated that he has received this pass book from Sri Anand Jaiswal and he wants to file this pass book for the purpose that he had worked in the bank as clerk and entry of the last date till he worked i.e. 6-2-06 is in his hand writing. It is also contended that there are other entries also.

19. The A.R. of the opposite party argued that this pass book has been obtained in collision.

20. I have examined this aspect of the matter and I do not find any such type of collision wherein the applicant could collude with Anand Jaiswal. This pass book is in original. Specific question was put to M.W.I in the examination in chief regarding the hand writing in this pass book. The question was, it is the saying of the claimant that there are entries in the hand writing of Phool Chand. The reply of the witness was that he could not say anything in this regard. Later on cross-examination was also made on this point.

21. In the cross examination he admitted that he was posted in this branch on 2-5-11, before this he was

never posted in this branch. Therefore, a question was put to him that when he was not posted in the year 1996 or before that in that very branch, then on what basis he could say the entries in the pass book were made by the officials of the branch. His reply was not specific. Again he replied that he could not identify and specify the entries in the original pass book which may be in the hand writing of the claimant Sri Phool Chand. He has only identified one entry of the year 1994 of a clerk Sri J.P. Thereafter he has also admitted that whatever the statement he has given that is only on the basis of record and not on the personal knowledge.

22. Therefore, in this way I have examined the pass book which is in original of Sri Anand Jaiswal regarding which the claimant has specifically stated on oath that the entries in this pass book of Sri Anand Jaiswal of the last date of 6-2-96 is in his hand writing and other entries are also in his hand writing. This entry has been made in a routine manner. It has not been inserted in between two entries. If these entries were not in his hand writing then it was very easy for the opposite party to have produced the then branch manager like Sri Dubey and Sri Saran to controvert the statement of the claimant, but they have not been produced and M.W.I who had never been posted at the branch in the year 1996 and before that has been produced, therefore, statement of M.W.I cannot be relied on this point.

23. There is a contention of the authorized representative for the opposite party that if there are entries of regular whole year from the back of Feb. 96, then it could be deemed that he had been working, but I find that there is no force in such type of arguments.

24. There is a contention of the opposite party that they have filed the salary statement and other record of other officials who were in the bank at that time. Had claimant been working at that time his name would have been in the salary register. This contention does not carry any weight. From the beginning the claimant is claiming that he was engaged as a worker but the work was being taken from him as clerk and his payment was made after taking receipt on a plain paper. Therefore, the papers filed by the opposite party in this respect do not carry any weight.

25. The opposite party has admitted in its written statement that the claimant had worked during the period in the year 1973-74 as clerk, but M.W.I stated that Phool Chand never worked before 1997, though the claimant had worked in the year 1973-74 Kaushal Puri Branch of the bank.

26. There is also a contention of the opposite party that different industrial disputes were raised by the claimant and the present industrial dispute has been filed after concealing the material facts. I do not find much force in this contention.

27. There is also a contention that the reference was sent to Patna Regional Office and on this point also the reference should be declared as vague. I further do not find much force in this contention also.

28. There is also aversion of the claimant that one Sri Ravi Chandra Shukla was also working with him. Previously he was of the same status as was held by the claimant and later on he was made permanent and regular. When a cross was put to M.W.1 on this point and he admitted that Ravi Chandra was working in the bank and he is still working in the bank but he stated that Mukesh Chandra and Ravi Chandra had been made permanent or permitted to work as a clerk under the orders of the Hon'ble Supreme Court.

29. I have examined this point also. But no such order of the Hon'ble Supreme Court has been filed by the opposite party to say that discretion has been exercised in favour of Mukesh Chandra and Ravi Chandra under the order of Hon'ble Apex Court. Whereas the claimant has specifically pleaded and produced evidence that his service have been terminated whereas juniors and other persons like Ravi Chandra and Mukesh Chandra have been permitted to continue as clerk by the bank.

30. In this regard the claimant has already alleged that the opposite party has committed breach of Sections 25G and 25H of the Act read with rules 77 and 78 made thereunder.

31. It is also contended by the opposite party that the claimant has not completed 240 days or more. I have examined the evidence. The claimant has stated on oath that he is M. Com. He was employed as a temporary clerk in the year 1973 and worked for 17 days. Thereafter he was removed and he was made to work as deposit collector by the bank at Birhana Road Branch and worked till 1986. During that period also the opposite party used to take the work as clerk from him in addition to the work of the deposit collector. When the work of deposit collector got extinguished as the opposite party also stated that he was working as collecting agent under a scheme known as Vyavasaya Nidhi. At this stage the claimant stated on oath that thereafter the bank continued to take work from him and he worked till 6-2-96. In such circumstances I find the continuity in service and engagement of the claimant with the opposite party. Since 1973 to 1986 the opposite party has also admitted his work in one capacity or the other in one spell or other. Therefore, a question arises why the claimant will make a false case and allege that he had been permitted to work as a clerk and allow him to continue work till 6-2-96 thereafter his services have been abruptly terminated. Under these circumstances I do not find any reason that the claimant will make a false claim in the given circumstances of the case.

32. Therefore, the evidence adduced by the claimant oral as well as documentary cannot be disbelieved and the claimant has discharged his burden. Now it was for the opposite party to have adduced such type of evidence to refute the claim of the claimant like they may have produced the branch manager who was posted or the debit and interest voucher etc. which were demanded by the tribunal itself but the opposite party failed to produce such documents alleging to have filed a report of a drafty which could not be accepted in such circumstances of the case.

33. Having concluded that the workman was in continuous service of the opposite party bank till 6-2-86 and having completed more than 240 days of work and also that the bank did not offer him any notice, notice pay or retrenchment compensation at the time of his retrenchment, and also finding that juniors to the claimant were retained in service by the bank and that he was never given any opportunity of his reemployment by the bank, thus the retrenchment of the claimant is in violation of the provisions of Sections 25F, 25G and 25H of Industrial Disputes Act, 1947 and rules 76, 77 and 78 made thereunder.

34. Therefore, it is held that the action of the management of State Bank of Bikaner and Jaipur, in terminating the services of Sh. Phool Chand from Feb. 96 is neither legal nor just. Accordingly the claimant is held entitled for reinstatement with 50% back wages continuity of service and all consequential benefits.

35. Reference is answered accordingly in favour of the claimant and against the opposite party.

RAM PARKASH, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3661.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 4/2012-13) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/72/2012-आई आर (सी एम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3661.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 04/2012-13 of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the

Industrial Dispute between the employers in relation to the management of Mana Inc., Hindustan Lalpath, U/G Sub Area of WCL, and their workmen, which was received by the Central Government on 3-12-2012.

[No. L-22012/72/2012-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/04/2012-13

Party No. 1 :

The Sub-Area Manager,
Mana Inc., Hindustan Lalpath,
U/G Sub Area of WCL,
Post : Lalpath,
Distt : Chandrapur

V/s

Party No. 2 :

The Working President,
Rashtriya Colliery Mazdoor Congress,
Vijay Bhawan,
Vithal Mandir Ward,
Distt : Chandrapur (MS).

AWARD

(Dated : 22nd November, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Yemurla Durgaiya Linga, for adjudication, as per letter No. L-22012/72/2012-IR(CM-II) dated 4-6-2012, for adjudication with the following schedule :

"Whether the action of the management of Mana Incline of Hindustan Lalpath Underground Sub Area of Chandrapur Area of WCL in denying wage protection to Shri Yemurla Durgaiya Linga who met with an accident while on duty is legal and justified ? To what relief is the concerned workman is entitled ?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement and the case was fixed to 13-8-2012 for filing of statement of claim alongwith documents list of reliance and witnesses. On 13-8-2012, the management of WCL appeared through their advocate. Though the service of

notice sent by registered post with acknowledgement due was sufficient on the petitioner, neither the petitioner appeared in the case nor filed any statement of claim. In the interest of justice, the case was adjourned to 26-9-2012 for filing of statement of claim. To give a last chance to the petitioner to file the statement of claim, the case was adjourned from 26-9-2012 to 22-11-2012, as on 26-9-2012 also the petitioner neither appeared nor filed any statement of claim.

On 22-11-2012 advocate for the management was present. The petitioner did not appear on repeated calls. No statement of claim was also filed. As it appeared from the record that the petitioner was not interested to proceed with the case, the case was closed and posted for passing of award.

3. As no statement of claim has been filed by the petitioner inspite of giving sufficient scope for the same it is necessary to pass a "no dispute" award. Hence, it is ordered :

ORDER

The reference be treated as "No dispute" award. The workman, Shri Yemurla Durgaiya Linga is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डबल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 64/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था ।

[सं. एल-22012/348/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3662.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Hindustan Lalpath Mine No. 1 of WCL, and their workman, which was received by the Central Government on 03-12-2012.

[No. L-22012/348/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/64/2005

Date 20-11-2012

Party No. 1 : The Sub Area Manager,
Hindusthan Lalpeth Mine No. 1,
Western Coalfields Limited,
Chandrapur

Versus

Party No. 2 : Shri Lomesh Maroti Khartad.
President, National Colliery
Workers Congress, Ambedkar Ward,
Ballarpur, Tah. & Distt.
Chandrapur (M.S.)

AWARD

(Dated : 20th November, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Hindusthan Lalpeth Mine No. 1 of WCL and Smt. Laxmi, the dependent of deceased workman, Pocham Kondaya Bogaram for adjudication, as per letter No. L-22012/348/2004-IR (CM-II) dated 3-8-2005, with the following schedule :

"Whether the action of the management of Chandrapur Area of WCL in treating Sh. Pocham Kondaya Bogaram, Badli Underground Loader even after completion of 190 days attendance within one year of his joining service as a Badli Loader was legal and justified in terms of the clause 3.3 of the Certified Standing Orders of WCL? If not, to what relief workman was entitled?"

2. "Whether the action of the management in denying following benefits to the workmen/dependents is legal and justified? If not, to what further relief the dependent of the concerned workman is entitled? (i) Employment of the dependent of Late Sh. Pocham Kondaya Bogaram as per para 9.3.1 of the NCWA-VI. (ii) Benefits under the CMPF Scheme 1948. (iii) Benefits under the Life cover Scheme as per para 9.1.0 of the NCWA-VI. (iv) Leave with wages as per Sec. 25(3)(a) and 52(10) of the Mines Act, 1952".

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union "Koyla

Shramik Sabha (HMS)" ("the union" in short) filed the statement of claim on behalf of Smt. Laxmi, the dependent of deceased workman, Pocham Kondaya Bogaram (The "deceased workman" in short) and the management of WCL (here-in-after referred to as the "Party No. 1") filed its written statement.

The case as projected by the union in the statement of claim is that the deceased workman, was working as a loader since long at Nandgaon Incline colliery of WCL on continuous basis, but party no. 1 was showing him as a worker engaged by contractor, so an industrial dispute was raised by RKKMS (INTUC) on behalf of the deceased workman, before the A.I.C (C), Chandrapur and there was a tripartite settlement before the ALC on 25-5-1992 and basing on such settlement, party no. 1 issued an appointment letter bearing no. 1523 dated 15-5-1996 in favour of the workman as a fresh "Badli" piece rated loader and posted him at Hindusthan Lalpeth Underground Coal Mine No. 1 and the deceased workman worked there on and from 11-5-1996 continuously and during his employment, he became ill and referred to Tata Cancer Hospital, Mumbai by party no. 1 for treatment and then to Government Medical College Hospital, Nagpur vide letter No. 1065 dated 11-8-1997 of the Chief Medical Officer, Chandrapur Area Hospital, WCL and during the period of treatment, he died on 3-10-1997 at Lalpeth and party no. 1 was intimated about the death of the workman, Pocham and on receipt of the death certificate of the deceased workman, the Manager, Hindusthan Lalpeth Colliery Mine No. 1, chandrapur vide office order no. 2302 dated 23/27-10-1997, removed his name from the rolls of the said colliery w.e.f. 4-10-1997 and Smt. Laxmi, the widow of deceased workman represented for her employment, as the dependent to party no. 1, soon after the death of her husband. It is further pleaded by the union that the deceased workman had completed 282 days of work from June, 1996 to July, 1997 and 254 days of work from June, 1996 to May, 1997 and on receipt of the application of Smt. Laxmi and after due verification, the Personnel Manager, Hindusthan Lalpeth underground sub-area, recommended her case for employment as dependent of deceased workman vide his letter dated 4-5-1999 and again vide his letter dated 6/6-5-1999 to the Deputy Chief Personnel Manager, Chandrapur Area, WCL and Smt. Laxmi and the union approached party no. 1, a number of times for payment of the dues of the deceased workman, such as, leave wages, amount on account of Life Cover Scheme, CMPF amount, Pension, Gratuity etc. and so also employment and interim monetary compensation, but party no. 1 did not consider the same and Smt. Laxmi submitted a letter dated 29-01-2004/12-02-2004 the Chief General Manager, Chandrapur Area with copies to the Director (P) and CMD, WCL, Nagpur, reiterating her claim, but nothing was done in the matter and the matter was also taken by the union, vide letter no. 2004 dated 14-2-2004

and letter dated 30-6-2005, but the same were not considered, so the union took up the case with ALC (C) Chandrapur vide letter dated 25-2-2007 and the reference was made to the Tribunal for adjudication.

The union has prayed for payment of Rs. 3000/- with 18% compound interest from 4-12-1997 till the actual payment is made, the dues due to the workman and dues due to the death of the workman and employment to Smt. Laxmi.

3. The party no. 1 in their written statement have pleaded inter-alia that the deceased workman was appointed as Badli piece rated loader at Hindustan Lalpath underground sub-area vide order dated 4-5-1996 and the workman joined duties on 11-06-1996 and the said appointment was for specific period up to 31st July, 1996 and after 31st July, 1996, no further order of appointment or extension of the appointment was issued in his favour and the deceased workman died on 3-10-1997 and on the date of death, the deceased workman was not holding any appointment order and he was never taken on probation and his services were also never regularized as permanent employee and during the life time of the deceased workman, there was no grievance or request for regularisation of his services and no document has been placed on record to show that deceased workman was a member of the union and the subject matter involved in reference does not constitute an industrial dispute as contemplated under Section 2-K of the Act and the reference is not within the jurisdiction of this Tribunal and the reference is not tenable and bad in law. It is further pleaded by party no. 1 that the days for which the deceased workman worked beyond 31-7-1996 were essentially of temporary nature and wages for the same were paid to him on daily basis and therefore, the deceased workman had no claim whatsoever for permanency/regularisation and the selection of the deceased workman was not made after following the due procedure and on that count also, the deceased workman was not entitled for regularisation and the deceased workman had not put in 190 days of work in any one year, much less calendar year and therefore, the deceased workman was not entitled to claim any benefits of leave etc. as per Section 52 (10) of the Mines Act, 1952 and though the deceased workman was not a regular employee, they displayed all the good gesture to treat him medically on humanitarian and social grounds and since the deceased workman had not achieved the status of a regular employee, he was not entitled for any benefits applicable to regular employee and they have already paid all the legal claims payable to the deceased workman and a sum of Rs. 20,000 was paid to Smt. Laxmi vide cheque no. 340129 dated 20-12-1997 towards Life Cover Scheme and due amount of Provident Fund has also already been paid and as the deceased workman was only a Badli employee at the time of his death, the claim of his wife for appointment on

compassionate ground could not be considered and the claim is neither legal nor justified and therefore, the reference is to be answered in negative.

The further case of party no. 1 is that the deceased workman was not entitled for any gratuity, much less as claimed and the claim of gratuity is also beyond the terms of reference made by the Government and the claim of Smt. Laxmi for compassionate appointment was not considered, since her claim was not in accordance with the rules and the dispute has been raised by the wife of the deceased workman and there is no provision in the Act, which permits raising of an industrial dispute by a union at the instance of a relative of an employee and on this ground also, no valid industrial dispute exists and therefore, the reference is liable to be answered in-favour of the management and against the union.

4. In the rejoinder, it is pleaded by the union that as the reference has been made by the competent Government after finding of the existence of an industrial dispute, the same is maintainable and the Tribunal has the jurisdiction to decide the same and Badli worker also fails within the definition of workman and therefore, they are entitled for the benefits under all industrial law and claim of the appointment on compassionate ground is maintainable under the Act.

5. To prove their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence. Shri Chandrakanta Khande, the General Secretary of the union and Smt. Laxmi, the widow of the deceased workman has been examined as the two witnesses on behalf of the union.

One, Shri Bhagwan, Senior Manager (Personnel) of Hindustan Lalpath Sub-Area has been examined as a witness on behalf of Party no. 1.

6. Shri Chandrakanta Khande in his examination-in-chief, which is on affidavit has reiterated the facts mentioned in the statement of claim. However, in cross-examination, this witness has stated that the deceased workman was appointed as a Badli piece rated loader and such appointment was upto 31-7-1996 and except Ext. W-XV, no other document has been filed to show that the service of the deceased workman was extended after 31-7-1996.

Smt. Laxmi in her evidence has also reiterated the facts mentioned in the statement of claim, but in her cross-examination, she has stated that she has no knowledge about National Coal Wages Agreement, Standing Orders and other Rules and regulation of WCL and her husband worked for one year.

7. The evidence of witness for the party no. 1 is also the reiteration of the facts mentioned in the written statement. In his cross-examination, the witness has

admitted that the deceased workman, Pocham died while he was working as a Badli worker and wages was paid to him from the date of his appointment till his death and Ext. M-VI is the attendance particular of the deceased workman for 1996 and 1997.

8. Before delving into the merit of the matter, it is to be mentioned that at the time of argument, it was submitted by the learned advocate for the petitioner that the benefits other than the benefit of employment have already been granted to Smt. Laxmi, so there is no need for adjudication of the same. Such facts have also been admitted by the parties in the written statement and evidence adduced before this Tribunal.

So the points remain for consideration are regarding the legality or other wise of treating the deceased workman as a "Badli" worker even after completion of 190 days attendance within one year and not giving of compassionate appointment to Smt. Laxmi, the widow of the deceased workman.

9. The first question raised by the learned advocate for party no. 1 is that the Tribunal has no jurisdiction to decide the reference as because the dispute raised by the union on behalf of Smt. Laxmi, the widow of deceased workman is not an industrial dispute as defined under Section 2(K) of the Act and as such, the reference is bad in law.

On the other hand, it has been submitted by the learned advocate for the petitioner that once a reference has been validly made by appropriate Government, the Tribunal must adjudicate the dispute on merits and the Tribunal cannot go into the validity of the reference and the expanding definition of "workman" as contained in Section 2(S) of the Act would confer a right upon the dependent to obtain appointment on compassionate ground and provision for giving employment to the dependent of an employee who dies in harness is a condition of service in view of the settlement entered into by and between the employer and the employees and a claim for appointment on compassionate ground is an industrial dispute and as such, the reference is not bad in law and the Tribunal has jurisdiction to adjudicate the dispute so referred.

In support of such contentions, the learned advocate for the petitioner placed reliance on the decisions reported in 1984 (4) SCC-392 (Workmen employed by Hindustan Liver Ltd. Vs. Hindustan Liver Ltd.), AIR 2000 SC-469 (National Engineering Industries Ltd. Vs. State of Rajasthan), 2007 (115) FLR-427 (Mohan Mahto Vs. M/s. Central Coal Fields Ltd.), 1993 (1) BLJ-52 (Employees of M/s. BCCL Vs. Their Workmen) and 2000-I-LLJ-196 [Municipal Employees Union Vs. Secretary (Labour), Govt. of NCT of Delhi and another].

10. In the decision reported in 1984(4) SCC-392 (Supra), the Hon'ble Apex Court have held that :—

"Labour and Services—Industrial Disputes Act, 1947-Section 10 and 2(K)—One a reference is validly made by appropriate Government, Tribunal must adjudicate the dispute on merits-Practice of raising preliminary objections in the reference disapproved."

11. In the decision reported in AIR 2000 SC-469 (Supra), the Hon'ble Apex Court have held that :

"Industrial Disputes Act (14 of 1947) S. 10-Reference to Industrial Tribunal—Jurisdiction—cannot go into the validity of the reference."

12. In the decision reported in 2007 (115) FLR-427 (Supra), the Hon'ble Apex Court have held that :

"Settlement within the meaning of Sub-Section (3) of Section 18 of the Industrial Disputes Act is binding on both the parties and continues to remain in force unless the same is altered, modified or substituted by another settlement.

* * * * *

The expanding definition of "workman" as contained in Section 2(S) of the Industrial Disputes Act would confer a right upon the appellant to obtain appointment on compassionate ground, subject, of course, to compliance of the conditions precedent contained therein."

13. In the decision reported in 1993 (1) BLJ-52 (Supra) the Hon'ble High Court, Ranchi Bench have held that :

"In this case, provision for giving employment to the dependent of an employee who dies in harness in a condition of service. Such a condition of service has been included in the settlement entered into by and between the employer and employees. Such a provision per se cannot be said to be unreasonable."

14. In the decision reported in 2001-I-LLJ-196 (Supra) the Hon'ble Delhi High Court have held that :

"Industrial Disputes Act, 1947-Sec. 2(K)—Industrial Dispute—Definition of—Word "Person" appearing in section is wide enough to permit any person to raise an industrial dispute when condition of labour is involved."

15. Applying the principles enunciated by the Hon'ble Courts as enunciated in the above decisions to the present case in hand, it can be held that the dispute raised by the union on behalf of Smt. Laxmi for compassionate appointment can be said to be an industrial dispute and the union is entitled to raise the dispute and the reference made by the Central Government is not bad

in law and the Tribunal has to decide the reference on merit.

16. The claim of the union is that the deceased workman should not have been held to be a "Badli" worker and he should have been held to be a permanent workman, as he had completed 240 days of attendance in a continuous period of one year.

The case of the party no. 1 is that though the deceased workman was appointed temporarily till 31-7-1996 from 1-6-1996 vide letter no. 1052 dated 1-6-1996, he continued to work as piece rated Badli loader beyond the said date inadvertently, without any letter of his extension and he died on 3-10-1997 and his name was removed from the colliery roll vide office order dated 23/27-10-1997 and during his service period, he had not made any claim for regularisation as a permanent loader and in 1996, his total attendance was 137 days and in 1997, his attendance was 145 days and as he did not put the required minimum 190 days of attendance as an underground worker in any of the calendar year, he cannot be deemed to be a permanent worker and Section 51 of the Mines Act defines a calendar year as the period of twelve months beginning with the first day of January in any year.

However, in view of clause 3.3 of the Certified Standing orders and as the definition given under Section 51 of the Mines Act of "Calendar year" is for the purpose of "Chapter VII-Leave with wages", I find no force in the contention raised by party no. 1.

Clause 3.3 of the certified standing orders reads as follows : —

"Badli or Substitute one who is appointed in the post of permanent workman or probationer who is temporarily absent, but he would cease to be a "Badli" on completion of a continuous period of service of one year (190 attendance in the case of below ground workman and 240 attendance in case of any other workman) in the same post or other post or posts in the same category, or earlier if the post is vacated by the permanent workman or probationer. A "Badli" working in place of a probationer would be deemed to be permanent after completion of the probationary period."

It is clear from clause 3.3 of the Certified Standing Orders that the same does not speak of any calendar year, but speak of continuous period of service of one year. So, the contentions raised by the party no. 1 that the required attendance is to be counted according to calendar year cannot be entertained.

It is clear from the documents on record and also the admitted case that the workman had completed the required attendance from June, 1996 to May, 1997 and in view of the deemed provision of clause 3.3 of the Certified Standing

Orders, he had ceased to be a Badli worker and he had became a permanent employee before his death. So treating the deceased workman as "Badli" worker by party no. 1 is not justified.

17. It is not disputed that Smt. Laxmi is the widow and dependent of deceased workman, Pocham Kondaya. It is also not disputed that there is provision in the NCWA-VI of giving employment to one dependent of a workman, who dies while in service. It is also clear from the materials on record that the deceased workman died while in service. The party no. 1 did not consider the application of Smt. Laxmi for employment on the ground that deceased workman was not holding any appointment order on the date of his death.

At the time of argument, it was submitted by the learned advocate for the party no. 1 that even if it is found from record that the deceased workman continued to work beyond 31-7-1996, still then, he was a "Badli" worker and as the provision of giving employment to one dependent of a workman, who dies in service do not have any application to the dependent of Badli worker, the party no. 1 rightly denied employment to Smt. Laxmi.

The learned advocate for the petitioner submitted that there is nothing in NCWA-VI to show that the provision of giving employment to a dependent is applicable only to permanent workman and not to "Badli" worker and as such, even if the deceased workman is treated to be a badli worker on the date of his death, still then, his dependent, Smt. Laxmi is entitled for employment.

In support of the contention, the learned advocate for the petitioner placed reliance on the decisions reported in 1993 (1) BLJ-52 (Supra) and 2004 I CLR-872 (Panyam Cement Employees Union Vs. Commissioner of Labour).

18. In the decision reported in 1993(1) BLJ-52 (Supra) the Hon'ble High Court, Ranchi Bench have held that :

"It was further held that in any event, there is nothing in National Coal Wage Agreement No. II to show that clause 10.4.2 thereof is applicable only to a permanent workman."

19. In the decision reported in 2004-I-CLR-872 (Supra) the Hon'ble High Court of A.P. have held that :

"Held, Badli workers are workmen as contemplated u/s. 2(S) of the I. D. Act."

So, keeping in view of the principles enunciated by the Hon'ble Courts as mentioned above, now, the present case in hand is to be considered.

20. It is already held that the deceased workman should have not been treated as a "Badli" worker and he should have been deemed as a permanent workman. Now, it is to be found out if Smt. Laxmi is entitled for employment,

even if the deceased workman is held to be a "Badli" worker for the sake of argument.

21. It is clear from the pleadings of the parties, evidence on record and the submissions made by the learned advocates for the parties that the claim of Smt. Laxmi to give her employment was rejected by the party no. I only on the ground that she being the dependent of a Badli worker is not entitled for employment. So, the only point for consideration is whether the dependent of a Badli worker is entitled for employment as per the provisions of NCWA.

22. The appointment of deceased workman on 1-6-1996 as a Badli worker and that he worked till July, 1997 and he died on 3-10-1997 has not been disputed by the parties. NCWA-IV was in force when the deceased workman was appointed. Likewise, NCWA-VI was in operation at the time of the death of the deceased workman. It is also not disputed that there was provisions in NCWA-IV, V & VI for giving employment to the dependents of a worker who dies while in service. As on the date of the deceased workman, NCWA-VI was in force, it is necessary to consider as to whether Smt. Laxmi is entitled for employment as provided in NCWA-VI.

The relevant portion of clause 9.5 of NCWA-VI, which is in respect of giving employment/monetary compensation to female dependent of workmen, who dies while in service and who are declared medically unfit as per clause 9.4.0 above would be regulated as under :

- (i) In case of death due to mine accident, the female dependent would have the option to either accept the monetary compensation of Rs. 3000/- per month or employment irrespective of her age.
- (ii) In case of death/total permanent disablement due to causes other than mine accident and medical unfitness under clause 9.4.0, if the female dependent is below the age of 45 years, she will have the option either to accept the monetary compensation of Rs. 3000/- per month or employment.

In case the female dependent is above 45 years of age, she will be entitled only to monetary compensation and not to employment.

It is clear from the above clause that a female dependant of a workman is entitled to employment or monetary compensation if the workman dies while in service. The specific word mentioned in the said clause is "workman" and nothing else. It does not specify the category of workman. It also does not say that dependants of Badli workman are not entitled for the benefit of the same. It also does not provide that dependents of Badli worker, who had not done 190/240 days of work in any

calendar year, are not entitled to get the benefit of the provision.

Now, it is to be considered as to whether a Badli worker is a workman or not. NCWA-VI does not have any such definition. It is admitted by the parties that the provisions of certified standing orders of the WCL were applicable to deceased workman. The certified standing orders provide the definition of "Workman". In section 1 of the said standing orders (Commencement and Application), it is mentioned that it shall apply to all workmen employed in all units of M/s. Western Coalfields Limited situated in different places in the country which come within the definition of Industrial Employment (Standing Orders) Act, 1945 and include all workmen governed by the National Coal Wage Agreement. Section 3.1 of the said Standing Orders provides the classification of workman for the purpose of the Standing Orders. The same reads as follows :

- (a) Apprentice
- (b) Badli or Substitute
- (c) Casual
- (d) Permanent
- (e) Probationer
- (f) Temporary

The above classification shows that Badli or Substitute employee is also a workman.

When there is no bar either in the NCWA or in the Certified Standing Orders to give the benefit of clause 9.5.0 of the NCWA-VI to dependants of Badli workman (whether he had done 190/240 days of work in any calendar year or not), the decision of the party no. I that the applicant is not entitled for employment is not justified. Hence, it is ordered :

ORDER

The action of the management of Chandrapur Area of WCL in treating Sh. Pocham Bogaram, Badli Underground Loader even after completion of 190 days attendance within one year of his joining service as a Badli Loader was illegal and unjustified in terms of clause 3.3 of the Certified Standing Orders of WCL.

2. The action of the management in denying employment to the dependents of the deceased workman is illegal and unjustified. The applicant, Smt. Laxmi, the widow and dependant of the deceased workman, Pocham Kondya Bogaram is entitled for employment as per NCWA-VI. As it is admitted that other benefits have already been given, the applicant is not entitled to other benefits mentioned in the schedule of reference.

The party no. 1 is directed to implement the award within one month from the date of publication of award in the official gazette:

J.P. CHAND, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3663.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 129/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/346/1996-आई आर (सी-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3663.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 129/1997) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL, and their workman, which was received by the Central Government on 03-12-2012.

[No. L-20012/346/1996-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT

Shri Kishori Ram,
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 129 of 1997

Parties : Employer in relation to the management of Moonidih Area of M/s. BCCL and their workman.

Appearances :

On behalf of the workman : Mr. D. Mukherjee, Ld. Advocate

On behalf of the employer : Mr. D.K. Verma, Ld. Advocate

State : Jharkhand

Industry : Coal

4636 GI/12-7

Dated, Dhanbad, the 16th October, 2012

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/346/96-I.R. (Coal-I) dated 20-11-1997.

SCHEDULE

“Whether the action of the management of Moonidih Project of M/s. BCCL in demoting Sh. Teklal Hazam, Winding Engine Operator after an enquiry is justified? If not, to what relief is the concerned workman entitled?”

2. The case of the workman Teklal Hazam as sponsored by the Union concerned is that he was a permanent employee of Moonidih Project employed as a Winding Engineer Operator since long time. He worked unblemishly. But he was issued a chargesheet dt. 31-10-/01-11-1991 of his misconduct under clauses 26.1.2, 26.1.11, 26.1.15 and 26.1.20 of the Certified Standing Order for the accident caused by a defect in the Shaft Fitting while on his duty in 2nd Shift of 1st October, 1991. Though he had reported to his superior of it. He replied to the chargesheet, denying the charges and explaining the factual position of the machine. Nevertheless at the enquiry held by the management into it, though the charges levelled against him could not be established, he was illegally demoted from the post of Winding Engine Operator to that of Miscellaneous Mazdoor Cat. II as per the letter dt. 25/27-7-92 of the Management. On raising a conciliation proceeding before the A.L.C.(C), Dhanbad, about it, the management put pressure upon him to get withdrawn by the Union which raised the Industrial Dispute, the workman was reinstated as a Winding Engine Operator in Technical Grade but on the stage lower than the last stage in the pay scale of the Grade Rs. 1387-75-2137-80-2537 w.e.f. 12-10-1993. He is entitled to re-instatement in his original post of Winding Engine Operator Grade 'A' by resolving the said order of his demotion. The management had taken his signature under threat and undue influence for the withdrawal of the I.D. It has no legal right to do unfair labour practice during the pendency of the industrial dispute. Alleging the action of the management as unjustified, it is alleged that the workman is entitled to reinstatement with full back wages for the period of his demotion from 25/27-7-92 to 12-10-1993, the cost of the proceeding and other benefits with Seniority since 1-10-1991.

3. Further workman himself in his rejoinder has alleged that with categorical denials that the accident was not due to his fault, as many other superior officers were posted in the second Shift on 1-10-1991 and under their guidance and supervision he was working. So any blame

against him for alleged damage to the safety fittings etc. and its repair at the cost of ten thousand of rupees and loss of 82 lacs resulting in the alleged stoppage of production is false. The workman was in no way guilty of the charges. The chargesheet was malafide issued by an unauthorised person of the management in order to make him a scapegoat and to save other higher officials. The enquiry was held by a biased officer without principle of natural justice. The finding of the Enquiry Officer was perverse and unbased on evidence. Accordingly, the management mechanically passed an order of aforesaid punishment against which in the Appeal, the Appellate Authority did not pass any speaking order. The workman never repeated for his alleged misconduct, and assured not to repeat it.

4. Whereas with specific denials the pleaded case of the Management is that while the workman was working as Winding Engine Operator at Pit No. 2 of Moonidih Project during the second Shift of Working on 1-10-1991, an occurrence took place at 7.30 p.m. in the Pit causing extensive damage to the Shaft and skip fittings resulting in stoppage of production since then upto 14-10-1991 at 10.45 p.m. The damage was too extensive, so the Chief General Manager as per order dt. 3/4-10-1991 constituted the Fact Finding Enquiry Committee under the General Manager (Engg.). Its Facts findings revealed complete damage to 210 meters of rigid guides, 4 nos. of buntons upto 130 meters, 3 nos. of guide suit, 9 nos. of brush guide boxes, 4 nos. of side guide rollers and 2 nos. of Central rollers. Their repair cost the engagement of 500 men shifts for total bill of Rs. 62,500 the materials worth Rs. 2,20,000 the engagement of 163 manshifts in collection of materials from other collieries for Rs. 20,375 as wages bills, and monetary loss of non-production from 1st to 14th October, 1991 Rs. 80 lakhs. The management suffered huge loss of 82 lakhs for rash and negligent driving of the skip winder by the workman. The workman as a competent and statutory post holder under the Mines Act and Coal Mines Regulations, 1957 was jointly and severally responsible for his rash and negligent acts in operating the winder even at the instance of his co-worker causing extensive damage to the property of the company for Rs. 82 lakhs. He and his co-worker the Supervisor in charge of that installation had got the automatic contravence and the over load coil short circuited to forcefully draw more power for lifting the skip to overcome the sticking point. Such excessive pressure resulted in serious damage to the guide button and all other accessories beyond repair.

5. The workman and his co-worker Sri Arvind Roy and Sri S.C. Pal, the Foreman and the Asstt. Foreman respectively were chargesheeted for their such misconducts, and disciplinary actions were initiated against them. They submitted their replies. As Winding Engine Operator in technical and supervisory grade-A the highest Grade for the Supervisory personnel, he failed to

discharge his responsibility for operation of the winder installation at No. 2 Pits of Moonidih Project. Sri S.C. Gaur, the Dy. Chief Personnel Manager of Moonidih Area as the Enquiry Officer fairly and properly held the enquiry in which the workman with his co-worker Sri A.N. Dwivedi, Foreman Incharge. Sri A.K. Sinha, Sr. Executive Engineer, as the management representatives and the aforesaid two proceededees with their co-workers concerned had participated fully for their own full defences, availing of full opportunities as per rule of natural justice.

The Enquiry Officer after completion the departmental enquiry submitted his enquiry report, holding the workman guilty of the charges. On the consideration of all materials and the enquiry report the management imposed upon him the penalty of his demotion from the post of Winding Engine Operator to that of Misc. Mazdoor in Cat. II as per the order dt. 25/27-7-1992. Over his repentant mercy petition dt. 28-9-93, the management in view of his misconduct of serious nature leniently but simply inflicted upon him the punishment of his demotion only, taking reformative aspect; thus he was reduced to the scale of pay by one stage only so as to alert him for duty as the lives of workers are at the work of such Winder Operators. The workman is not entitled to any relief.

6. The management in its rejoinder has pleaded that its action in demoting the worker as noted above was legal and justified. His reversion to his original post and his original status with a token punishment of fixing his wages in Gr. A with lower stage practically without any loss to him. The management took reformative view in awarding him the penalty. The workman had undertaken not to pursue any case or dispute in that regard, but he pursued the case to utterly disregard to it.

FINDINGS WITH REASONING

7. In this case, the Tribunal as per order No. 33 dt. 27-2-2004 held the domestic enquiry of the management not fair, proper and in accordance with natural justice, as the management had failed to examine the Enquiry Officer Mr. S.C. Gaur despite ample opportunities as well as all the Enquiry proceedings having been filed. It resulted in the afresh examination of witnesses of the management and of the workman on merit.

Accordingly, MWI Vijay Kumar Singh, the then Executive Engineer for the management and WWI Tek Lal Hajam, the Retd. Winding Eng. Operator, the workman himself for the union concerned have been afresh examined on merit respectively.

8. Mr. D. Mukherji, the Learned Advocate for the Union, submits that in view of the judgement of the Hon'ble Apex Court in the case of Neela Kaplish vs. Labour Court reported in FLR 1999 (81) 188, the Tribunal has to decide the present issue on the basis of the fresh evidences adduced by the management, once the domestic enquiry

was held by it as not properly and fairly, as the second appertaining to the domestic enquiry would not constitute 'fresh evidence' within the meaning of Sec. 11A of the I.D. Act. The minutes study of the aforesaid cited authority reveals its factum half similar to that of the Reference under adjudication. It related to the failure of management in producing evidence at the preliminary point and like wise Neela Kaplish (Appellant) had failed to produce any evidence on her behalf, so it had resulted in the holding of domestic enquiry as unfair and improper hence the aforesaid case was remanded back by the Lordship for a fresh evidence, as her claim could not be rejected, rather she was entitled to be granted relief then and there. In the instance case under adjudication, I have already mentioned that when the management despite several opportunities had failed to substantiate the fairness and propriety of the domestic enquiry against the workman, it was held the domestic enquiry as unfair, improper, thereafter, the management as well as the workman has examined its/his own witness on merits by examining their own witnesses for fresh materials. In fact, the Tribunal has to look into the fresh evidence of both the parties, having regard to the Lordship's verdict in this case. But on the other side the contention of Mr. D.K. Verma, for the management that the provisions under Section 11A of the I.D. Act is only applicable to a case of discharge and dismiss which is not the case of Present Reference under adjudication—seems plausible, in such situation the liability of the Tribunal is to adjudicate the Reference in its terms on the basis of afresh evidence adduced on behalf of both the parties.

9. The perusal of the evidence of MWI Vijay Kumar Sinha, the then Executive Engineer of Moonidih now as the Superintendent one reveals him as a hearsay witness to the tripping of Winding Machine due to overload for the negligence of the workman on 1-10-1991 at about 7.30 p.m. in the second shift of his duty. The management witness has admitted in his cross-examination that the Winding Engine Operator (the workman) starts operating the Engine for moving the skip only after getting signal, and the skip and Winding Engine and its other machineries are maintained by the Technical Staff, but not by the Operator and that it is the duty of the Winding Engine Operator to report the Foreman Incharge of any defect detected in the Winding Machine, though the witness expressed his ignorance of the fact whether the workman informed the Foreman Incharge of the tripping incident at the relevant time.

10. On the other hand the evidence of WWI Tek Lal Hazam, now retired Winding Engine Operator, (workman) crystal clearly discloses his innocence of the allegation of the management for disruption of coal output/production hampered at the relevant time, because he had called up Sri Arvind Roy, the Shift Supervisor by telephone, and had informed him about the aforesaid

incident; and then at his advice, he (WWI) gave extra power to the Engine for lifting the loaded coal Tub from the under ground mines, it came up nicely; there was neither damage to its any cable nor any loss to the management for it; as such the workman has challenged the order dt. 25/27-07-1992 of the management demoting him from the post of Winding Engine Operator to that of the Gen. Mazdoor Cat. II as absolute wrong, though he had admitted to have been chargsheeted for the said incident (M. 1), his own signature in English on the photocopy of his reply to it and the enquiry to have been held by Sri S.C. Gaur, the Personnel Manager as an Enquiry Officer as per the Enquiry Proceedings bearing under the signature of his and Mr. A.N. Dwivedi, the Foreman Incharge as his representative for his defence (Extt. M.2 and Ext. M3 series) respectively. The workman has also claimed to check the Machine and its proper condition of the Engine at the relevant time, denying his aforesaid punishment for alleged negligence in his duty as just.

11. On the consideration of the aforesaid afresh evidence of both the parties, I find that the action of the management of Moonidih Project of M/s. B.C.C.L. in demoting workman Tek Lal Hazam, the Winding Engine Operator after an enquiry is absolutely unjustified and not proper in the eye of Law. Therefore, it is held that the workman is entitled to full back wages from the period of his demotion from 25/27-07-1992 to 12-10-1993 with other financial benefits thereof, but without cost of the proceeding, let the Award be submitted to the Ministry of Labour & Employment, Government of India, New Delhi for information and needful.

The management is directed to implement the Award within two months from the date of the receipt of the Award after its publication in the Gazette of Government of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3664.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 28/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था ।

[सं. एल-20012/432/2000-आई आर (सी-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3664.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2001)

of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relations to the management of M/s. BCCL, and their workman, which was received by the Central Government on 03-12-2012.

[No. L-20012/432/2000-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 28 of 2001

Parties : Employer in relation to the management of Kuya Colliery, Bastacolla Area of M/s. BCCL and their workmen.

Appearances :

On behalf of the workman : Mr. N.G Arun, Rep. of workman

On behalf of the management : Mr. U.N. Lal, Ld. Advocate

State : Jharkhand Industry : Coal

Dhanbad, the 18th October, 2012

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/432/2000 (C-I) dated 25-01-2001.

SCHEDULE

“Whether the action of the management of M/s. BCCL in not regularising the services of the workman Smt. Chandrika Roy, as Loading Clerk, Kuya Colliery under Bastacolla Area is legal, justified and proper? If not, to what relief is the workman entitled and from what date?”

2. Mr. N.G Arun, the Union Representative of the workman Chandrika Roy and Mr. U.N. Lal, the Ld. Advocate for the management are present. But no witness for the evidence of the workman has been produced despite Regd. notices.

On going through the case record, I find that this case has been pending for the evidence of the workman since 27-01-2006 for which earlier Regd. notices even the latest ones dt. 9-12-2010, 18-5-2011 and 16-8-2012 were issued to the Union concerned on its address noted in the Reference, yet not a single witness in support of the case of the workman within the period of more than six years has been produced. The workman by his conduct appears to be uninterested in pursuing the case of his regularisation. Therefore, the case is closed, as no longer industrial dispute exists. Accordingly, an award of no dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3665.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, धनबाद के पंचाट (आई डी संख्या 27/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/454/2000-आई आर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3665.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman which was received by the Central Government on 03-12-2012.

[No. L-20012/454/2000-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT DHANBAD

PRESENT :

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 27 of 2001

Parties : Employer in relation to the management of Bastacolla Area of M/s. BCCL and their workman.

Appearances :

On behalf of the workman : Mr. N.G Arun, Rep. of workman
 On behalf of the management : Mr. U.N. Lal, Ld. Advocate
 State : Jharkhand Industry : Coal
 Dated : Dhanbad, the 18th Oct., 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/454/2000-IR (C-I) dated 25-01-2001 :

SCHEDULE

“Whether the action of the management of M/s. BCCL in not regularizing the services of Sri B.M. Tiwari as Loading Inspector Kuya Colliery under Bastacolla Area is justified and legal? If not, to what relief is the concerned workman entitled and from what date ?”

2. Though Mr. N.G Arun, the Union Representative for workman B. M. Tiwari is present, yet no witness for the evidence for the workman despite Regd. notices has not been produced. Mr. U.N. Lal, the Learned Advocate for the management is present.

From the perusal of the case record, it stands evident from it and the case has been pending for the evidence of the workman since 27-1-2006 for which Regd. notices earlier and latest dated 9-12-2010, 18-5-2011 and 16-8-2012 were issued to the Union concerned on its address noted in the Reference. Even then not a single witness in support of the case of workman has been produced. The very conduct of the workman himself indicates that he is not interested in pursuing the case for its finality. This is the oldest case of the year 2001. Under these circumstances, let the case is closed and accordingly an award of no dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3666.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, धनबाद के पंचाट (आई डी संख्या 135/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था ।

[सं. एल-20012/165/2000-आई आर (सी-I)]
 अजीत कुमार, अनुभाग अधिकारी

4636 GI/12-8

New Delhi, the 3rd December, 2012

S.O. 3666.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 135/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 03-12-2012.

[No. L-20012/165/2000-IR (C-I)]
 AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

PRESENT :

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 135 of 2000

Parties : Employer in relation to the management of Kusunda Area of M/s. BCCL and their workman.

Appearances :

On behalf of the workman : Mr. N.G Arun, Rep. of workman

On behalf of the management : Mr. D.K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dated : the Dhanbad, the 18th Oct., 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/165/2000-I.R. (C-I) dated 18-09-2000 :

SCHEDULE

“Whether the action of the management of Godhur Colliery of M/s. BCCL in not regularizing the services of Sri Gopal Nonia as Clerk in the Loading section is justified ? If not, to what relief is the concerned workman entitled and from what date ?”

2. Though Mr. N.G Arun, the Union Representative for workman Gopal Nonia and Mr. D.K. Verma, the Learned Advocate for the management are present but no witness for the evidence of the workman has been produced.

Perusal of the case record reveals the fact that the case has been pending for the evidence of the workman since 5-11-2004 for which earlier and latest Regd. notices dt. 8-11-2010, 18-6-2012 and 16-8-2012 were issued to the Union concerned on its address as noted in the Reference, yet not a single witness in support of the case of the workman for his regularization has been produced till now. Since it is the oldest case of the year 2002 and the workman himself by his own conduct appears to be disinterested in pursuing of his case. Therefore, let the case be closed, as no longer the industrial dispute exists. Accordingly, an award of no dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3667.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार ओरिएन्टल कोक इण्डस्ट्रीज़ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (आई डी संख्या 117/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/216/2003-आई आर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3667.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 117/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Oriental Coke Industries and their workman, which was received by the Central Government on 03-12-2012.

[No. L-20012/216/2003-IR (C-I)]
AJEET KUMAR, Section Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD PRESENT:

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 117 of 2003

Parties : Employer in relation to the management of Oriental Coke Industries, Kandra, Govindpur, Dhanbad and their workman.

Appearances :

On behalf of the workman : Mr. S. Singh, Ld. Advocate

On behalf of the management : Mr. J.N. Das, Ld. Advocate

State : Jharkhand Industry : Coal

Dhanbad, the 16th Oct., 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the power conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/216/2003-IR (C-I) dated 10-11-2003 :

SCHEDULE

“Whether the action of the management of Oriental Coke Industries, Kandra, Govindpur, Dhanbad in terminating the services of Sri Wakil Shaw, Bhatta Mistry, w.e.f. 26-11-2002 is just fair and legal? If not, to what relief is the concerned workman entitled?”

2. None appeared for the workman Wakil Shaw nor the workman himself present nor rejoinder filed on his behalf to the petitioner dt. 16-1-2012 of the management for dropping the case on the ground of already payment of all legal dues to the workman from the office of the management; like wise none appeared on behalf of the management.

After perusal of the case record, I find though the case has been pending for experte evidence of the workman since 20-7-2004, not a single witness examined on behalf of the workman despite a last chance for it on 28-2-2012 or even till today and thereafter it has been running for filing a rejoinder to the petition of management dt. 16-1-2012 since 2-5-2012, but the workman neither appeared nor filed any rejoinder to the said petition of the management which is related to the prayer of the management for dropping of the case on the ground that the workman had already received his all dues on 26-3-2004 from the management as per his undertaking to withdraw his case. The case is related to an issue of termination of his service w.e.f. 26-11-2002. The conduct of the workman manifests his disinterestedness in pursuing the case sincerely.

Under these circumstances, the case is closed; accordingly, an award is passed as non existent of the Industrial dispute now.

KISHORI RAM, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3668.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (आई डी संख्या 215/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/282/2001-आई आर (सी-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3668.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 215/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 03-12-2012.

[No. L-20012/282/2001-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

PRESENT:

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 215 of 2001

Parties : Employer in relation to the management of Madhuban Coal Washery of M/s BCCL and their workmen.

Appearances :

On behalf of the workman : Mr. N.G. Arun, the Union Rep.

On behalf of the management : Mr. U.N. Lal, Ld. Advocate

State : Jharkhand Industry : Coal

Dated : the Dhanbad, the 01st Oct., 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following

dispute to this Tribunal for adjudication vide their Order No. L-20012/282/2001, I.R. (C-I) dated 12-09-2001 :

SCHEDULE

“क्या राष्ट्रीय कोलियरी मजदूर संघ की मा.को.को.लि. मधुबन कोल वाशरी का प्रबन्धतांत्र से मांग कि श्री बी.के. समाल एवं सूची में दिये गये अ.य. नो (09) कर्मकारों की सूची में उनके नाम के सामने दिये गये क्लारिकल पदों में जिन पर से कार्य कर रहे हैं, नियमित किया जाय उचित एवं न्यायसंगत है ? यदि हाँ, तो उक्त कर्मकार किस राहत के पात्र हैं तथा किस तारीख से है ?”

2. Neither Mr. N.G. Arun, the Union Representative nor any of the workmen B.K. Shamal and nine others as per list appeared for evidence of the workmen. Mr. U.N. Lal, the Ld. Advocate for the Management is present.

After going through the case record, I find the case has been pending for the evidence of the workmen since 22-09-2006. But despite Regd. notices including latest ones dt. 24-11-2011, 26-04-2012 and 8-8-2012 issued to the Secretary of Rastriya Colliery Mazdoor Sangh on its address noted in the Reference itself, not a single witness produced despite more than sufficient opportunities were given to the Union concerned. This is the oldest case of the year 2001 related to an issue for the regularisation of the workmen. The conduct of the Union Representative as well as that of the workmen shows the fact they are least concerned in pursuing the case sincerely. They appear to be disinterestedness to contest the case.

Proceeding with the case for uncertainty is unwarranted. Therefore, the case is closed and accordingly, it is awarded that no longer industrial dispute exists.

KISHORI RAM, Presiding Officer

Name	Present Designation	Working as
Shri B.K. Samal	Time Office Helper	Time Keeper
Shri K.R. Sagar	-Do-	-Do-
Shri Sona Hazam	-Do-	-Do-
Shri Devendra Singh	Weigh Bridge Helper	Weigh Bridge Clerk
Shri Indu Bhushan Kumar	Helper	-Do-
Shri Sheo Sharan Singh	General Mazdoor	-Do-
Shri Vinoy Shanker Pandey	-Do-	-Do-
Shri Agnoo Shahu	-Do-	-Do-
Shri Bachan Lal Shaw	Office Mazdoor	Typist
Shri Vikash Pandey	General Mazdoor	Despatch Clerk

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3669.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, धनबाद के पंचाट (संदर्भ संख्या 63/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/51/2004-आई आर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3669.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workman, which was received by the Central Government on 03-12-2012.

[No. L-20012/51/2004-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD LOK ADALAT

In the matter of reference u/s 10(1)(d)(2A) of I.D. Act.
Ref. No. 63 of 2004.

Employer in relation to the management of Saunda
Colliery M/s. CCL.

AND

Their workmen.

PRESENT:

Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the Workmen : Sri Yogendra Prasad,
Area Secretary

State : Jharkhand Industry : Coal

Dated 8-11-2012

AWARD

The Government of India, Ministry of Labour, has in exercise of the power conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the

Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

“Whether the demand of the Hind Mazdoor Kishan Panchayat from the management of Saunda ‘D’ Colliery of M/s. CCL. P.O. Saunda ‘D’, Distt. Hazaribagh to give promotion to S/Sri Yogendra, Deochand, Parmcshwar, Nagdeo and Suresh from Clerk, Grade-II to clerk, Grade-I as per provision of implementation Instruction No. 40 (1.1.40 dated 5-12-1984 of N.C.W.A.) is proper and justified? If so, to what relief are the concerned workmen entitled and from what date?”

Due notice has been served on the parties. Claim statements and rejoinder received. Before commencement of evidence the union files a petition to withdraw the case. Copy served without objection. Heard, the prayer for withdrawal of the case is allowed.

Hence No. Dispute Award passed. Communicate to Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3670.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, धनबाद के पंचाट (आई डी संख्या 90/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/74/2005-आई आर (सी-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3670.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 03-12-2012.

[No. L-20012/74/2005-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, DHANBAD

PRESENT:

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 90 of 2005

PARTIES:

Employer in relation to the management of Bastacolla Area of M/s. BCCL and their workmen.

Appearances:

On behalf of the workman : Mr. K.N. Singh, Representative of the workman

On behalf of the management : Mr. D.K. Verma, L.D. Adv.

State : Jharkhand Industry : Coal

Dated Dhanbad, the 16th October, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the power conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/74/2005-I.R. (C-I) dated 13-09-2005 :

SCHEDULE

“Whether the action of the management of G.O.C.P. under Bastacolla Area of M/s. BCCL in not regularizing Sri Anil Kumar Ojha as Loading Clerk is justified? If not, to what relief is the concerned workman entitled and from what date?”

2. Neither the Union Representative nor workman Anil Kumar Ojha appeared nor any witness for the evidence of the workman produced despite ample opportunities/ Regd. notices. Mr. D.K. Verma, the Ld. Advocate for the management is present.

Perused the case record. It stands clear from it that the case has been pending initially for filing rejoinder and the documents of the workman since 27-04-2006 and since thereafter for the evidence of the workman from 10-1-2012, for which Regd. notice dt. 22-6-2011 and 28-8-2012 were issued to the Vice President, Janta Mazdoor Sangh, Vihar Building, Jharia, Dhanbad on his address as noted in the Reference itself, yet not a single witness has been produced for the evidence of the workman. Such conduct of the Union Representative as well as that of the workman clearly indicates their disinterestedness in contesting the case. Under these circumstances, proceeding with the case for uncertainty is unwarranted. Hence the case closed and accordingly an award of “no dispute” is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3671.—ऑड्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध

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में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, धनबाद के पंचाट (आई डी संख्या 53/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/257/2002-आई आर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3671.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workman, which was received by the Central Government on 03-12-2012.

[No. L-20012/257/2002-IR (C-I)]

AJEEET KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

LOK ADALAT

In the matter of reference u/s 10(1)(d)(2A) of I.D. Act.

Ref. No.53 of 2003.

Employer in relation to the management of Area Colliery M/s. CCL.

AND

Their workmen.

PRESENT:

Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the Workman : Sri Sri U.N. Lal, Advocate

State : Jharkhand Industry : Coal

Dated 8-11-2012

AWARD

The Government of India, Ministry of Labour, has in exercise of the power conferred by clause (d) of Sub-section (1) and Sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of area colliery of M/s. C.C. Ltd., not to regularize Futu Mahato and 14 others workmen (As per list) as T.R. Worker is justified? If not, to what relief are the workmen concerned entitled and from what date?”

Due notice has been served on the parties. Claim statements and rejoinder filed by the Workman. Workman examined two witness. Workman evidence closed. During continuance of the case workman files an application to withdraw the case, copy served. It appears that this is no dispute between workman and management. Petition of withdrawal of the case filed by the workman allowed. So it is fit and proper to pass. No Dispute Award.

Hence No Dispute Awards passed. Communicate to Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3672.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (आई डी संख्या 68/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/367/1990-आई आर (सी-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3672.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/1991) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workman, which was received by the Central Government on 03-12-2012.

[No. L-20012/367/1990-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference u/s 10(1)(d)(2)(A) of I.D. Act.

Ref. No.68 of 1991.

Employer's in relation to the management of Amlo Project of M/s. CCL.

AND

Their workmen

PRESENT:

Sri Ranjan Kumar Saran, Presiding Officer

Appearances :

For the Employers : None

For the Workmen : None

State : Jharkhand

Industry : Coal

Dated 8-11-2012

AWARD

The Government of India, Ministry of Labour, has in exercise of the power conferred by clause (d) of Sub-section (1) and Sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of Amlo Project of M/s. C.C. L., P.O. Dhoari, Distt. Giridih by dismissing the services of Shri Jethu Oraon, Security Guard w.c.f. 2-4-88 is justified? If not, to what relief the workman is entitled to?”

Due notice has been served on the parties. Claim statements and rejoinder filed. One witness for the side of management examined cross-examined discharged. Though adequate opportunity given, the workman did not turn up. Eleven years has been elapsed. Finally after the joining of the present P.O. registered notice was issued to the workman. The workman did not turn up. The workman has lost interest in the case. There is no necessity to linger the case

Hence No Dispute Awards passed. Communicate to Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3673.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जेट एयरवेज (इण्डिया) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, इरनाकुलम के पंचाट (आई डी संख्या 53/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-11012/12/2002-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3673.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Jet Airways (India) Ltd. and their workman, which was received by the Central Government on 03-12-2012.

[No. L-11012/12/2002-IR (CM-I)]

AJEEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM

PRESENT :

Shri D. Sreecvallabhan, B.Sc., LL.B., Presiding Officer
(Tuesday the 30th day of October, 2012/8th Kartika,
1934)

I.D. 53/2006

Workman	<p>: K.N. Suresh Kumar, S/o Late K. Narayanan Nair, Sree Path, C/o Kala Rice Mill, Kaithakunda, (P.O.) Ayikkarapadi, Ernad Taluk, Malappuram.</p> <p>By M/s. M.K. Damodaran & Associates</p>
Managements	<p>1. The Station Manager, Jet Airways (India) Limited, 29, Mavoor Road, Calicut-673 016.</p> <p>2. The Chairman & Managing Director, Jet Airways (India) Ltd., 41/42, Maker Chambers III, Nariman Point, Mumbai- 400 021</p> <p>By M/s. Menon & Pai.</p>

This case coming up for final hearing on 29-10-2012 and this Tribunal-cum-Labour Court on 30-10-2012 passed the following :

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Government of India, Ministry of Labour by Order No. L-11012/12/2002-IR(M-I) dated 28-8-2002 referred this industrial dispute to the Labour Court, Calicut and later after the formation of this tribunal the same was transferred to this tribunal as per the direction in the judgment dated 13-3-2006 in WP(C)1069/2006 of the Hon'ble High Court of Kerala.

2. The dispute is :

“Whether the action of the management of M/s. Jet Airways (India) Ltd., in dismissing Sr. K.N. Suresh Kumar, Sr. Security Asstt. from service is just, fair and legal? If not, to what relief is the workman concerned entitled to?”.

3. After the receipt of the reference in the Labour Court, Calicut it was numbered as I.D. 4/2002 of that court and summons was issued to both parties. After service of summons both parties entered appearance before that court. Workman filed claim statement with a prayer for reinstatement with back wages and other benefits making the allegation that his termination of service as per order dated 19th October, 2001 is arbitrary and illegal and by challenging the validity of the enquiry conducted with regard to the allegations levelled against him in the charge sheet dated 23-7-2001. It is further alleged that the enquiry was conducted in an improper and haphazard manner without any compliance with the principles of natural justice. The allegations in the charge sheet are stated to have been made deliberately to wreak vengeance against him by some officials who were not in good terms with him. The enquiry is vitiated by procedural irregularity and the findings of the Enquiry Officer are perverse and not based on any material. Acceptance of the enquiry report was without giving any opportunity to him of being heard. The punishment imposed on him is also not proportionate to the alleged misconduct. The order of termination of his service is illegal as the enquiry was conducted in the flagrant violation of the principles of natural justice.

4. Management filed written statement denying the allegations in the claim statement challenging the validity of the enquiry and also as to the imposition of penalty. According to the management the enquiry was properly conducted without any violation of the principles of natural justice after affording sufficient opportunity to the workman to participate in the enquiry. The punishment imposed is proportionate to the misconduct especially in view of the past record of the employee. Hence the action of the management in dismissing the workman from service is just, fair and legal.

5. As the validity of the enquiry was under challenge the Labour Court, Calicut after taking evidence consisting of the depositions of WW1 & MW1 and Ext. M1 heard it as a preliminary issue and the enquiry was set aside after entering into a finding that it is vitiated as it was not properly conducted in accordance with law as per order dated 14th June, 2005. The order was challenged by the management by filing WP(C) No. 24324/2005(U) before the Hon'ble High Court of Kerala. It was dismissed vide order dated 18th March, 2011. Against that order management filed Writ Appeal No. 674/2011 before the Hon'ble High Court of Kerala and the same was also dismissed confirming that order.

6. While the matter was pending before the Hon'ble High Court there was stay of further proceedings in this case. After the dismissal of the Writ Appeal and on production of the copy of the judgment therein the case was posted for evidence of the management in view of the request made in the written statement to afford opportunity

to adduce further evidence in the event of invalidation of the enquiry. Management has not adduced any further evidence and hence the workman also did not adduce any evidence.

7. The points that arise for consideration are :

- (1) Whether the management has succeeded in proving the charges levelled against the charge sheeted employee ?
- (2) Whether the penalty imposed calls for any interference ?
- (3) Reliefs and costs.

8. **Point No. 1 :** The two charges levelled against the workman in the charge sheet are :

- (1) Riotous and disorderly behaviour during working hours at the establishment or any act subversive of discipline.
- (2) Wilful insubordination or disobedience whether alone or in combination with others to any lawful and reasonable order of a superior".

9. The allegations levelled against him in the charge sheet are that while he was working as Security Assistant in the service of the management he was selected by the management to attend a training programme at Mumbai commencing on 16th May 2001. While he was at Calicut Airport for his Journey to Mumbai at about 3 pm on 15th May 2001 he was found to be under the influence of alcohol by the security officer and Airport Manager and he did not accede to their demand to undergo medical check up before boarding the flight. He went near the Aircraft without a boarding pass and undergoing security check. The Airport Manager forwarded a detailed report about the incident to his Superior officer and based on which the charge sheet was issued to the workman.

10. After the invalidation of the enquiry it was incumbent on the part of the management to adduce evidence to prove the alleged misconduct before this tribunal and to consider the question of imposition of penalty. Management has not cared to adduce any evidence in spite of granting several adjournments for that purpose and even after allowing IA 144/2010 for adjournment of the case on payment of cost and posting the case for evidence to 29-10-2012. As the enquiry was invalidated and no evidence was adduced before this tribunal to prove the alleged misconduct after the invalidation of the enquiry it can only be held that the action of the management in dismissing the workman is not just, fair and legal.

11. **Point No. 2 :** As the management has failed to prove the alleged misconduct by adducing any evidence the charge sheeted employee cannot be held guilty of the charges and hence no penalty can be imposed on him.

12. **Point No. 3 :** In the result I find that the action of the management in dismissing the workman is not just, fair and legal. Hence the management is directed to reinstate him in service with full back wages, continuity of service and all other consequential benefits.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30th day of October, 2012.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witness for the Workman.

WW1 — Suresh Kumar K.N., "Sreepath", Kaithakunda P.O., Malappuram District, Pin-673 637.

Witness for the Management

MW1 — Surendra Kripal, Manager-H.R., Jet Airways (Pvt.) Limited, Mumbai.

Exhibit for the Workman—Nil.

Exhibit for the Management

M1 — Enquiry File.

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3674.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण एवं श्रम व्यायालय नं. 1, धनबाद के पंचाट (आई डी संख्या 221/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-20012/305/2001-आई आर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3674.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 221/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workman, which was received by the Central Government on 03-12-2012.

[No. L-20012/305/2001-IR (C-1)]
AJEET KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference u/s 10(1)(d)(2A) of I.D. Act.

Ref. No. 221 of 2001.

Employer's in relation to the management of
M/s. C.C. Ltd.
AND
Their workmen.

PRESENT :

Sri Ranjan Kumar Saran, Presiding Officer

Appearances :

For the Employers : Sri D.K. Verma, Advocate

For the Workman : Sri Lalo Manjhi, Concerned
Workman

State : Jharkhand Industry : Coal

Dated 6-11-2012

AWARD

The Government of India, Ministry of Labour, has in exercise of the power conferred by clause (d) of Sub-section (1) and Sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the Swang Washery of M/s. C.C.L., P.O. Swang, Dist. Bokaro in dismissing Shri Lalo Manjhi from services is justified? If not, to what relief is the workman concerned entitled ?"

Due notice has been served on the parties. Claim statement filed by the parties. One Witness examined by the management. Management evidence closed. At this stage the workman files a petition to withdraw the case. Copy served. Heard, prayer allowed. Workman does not want to proceed with the case.

Hence No. Dispute Awards passed. Communicate to Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3675.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 148/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/245/2002-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3675.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 148/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Western Coalfield Limited, and their workman, which was received by the Central Government on 03-12-2012.

[No. L-22012/245/2002-IR (CM-II)]
B.M. PATNAIK, Section Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/148/2003

Date 7-11-2012

Party No. 1 : The Chairman-cum-Managing
Director,
WCL, Coal Estate, Civil Lines,
Nagpur.

Versus

Party No. 2 : The Joint General Secretary,
Rashitya Koyal Khadan Mazdoor
Sangh, (INTUC), 604-Giripeth,
Nagpur-440010.

AWARD

(Dated : 30th October, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and the dependent of deceased workman, Shri Rajesh Pocham Gumadwar, for adjudication, as per letter No. L-22012/245/2002-IR (CM-II) dated 9-6-2003, with the following schedule :

"Whether the action of the management of M/s. Western Coalfields Ltd. of Hindustan Lalpeth Colliery Open cast Project, Chandrapur Area in justified in dismissing the deceased workman Sh. Rajesh Pacham Gumadwar, Driver w.e.f. 20-11-1997 and whether the action of the said management in denying employment or payment of monetary compensation @ Rs. 3000 P.M. to Smt. Padma Widow of the said workman in justified? If not, to what relief is Smt. Padma Widow of the deceased workman Rajesh Pocham Gumadwar entitled?

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2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the Union, "Rashitya Koyal Khadan Mazdoor Sangh (INTUC)", filed the statement of claim on behalf of the applicant Smt. Padma Gumadwar and the management of WCL, ("Party No. 1" in short) filed their written statement.

The case as projected by the union in the statement of claim is that it is a registered trade union and Late Rajesh Pocham Gumadwar, the deceased workman was its member and the party No. 1 is a government coal company and is a subsidiary coal company of Coal India Ltd. and is controlled by the Government of India and is a "State" under article 12 of Constitution of India and the deceased workman was initially appointed as Badli worker on 21-07-1984 by the party no. 1 and he on having been put in the requisite attendance of 190/240 days of attendance in a year was regularized as permanent workman from the year 1986 and he was also promoted as a driver, Cat. V under the National Coal Wage Agreement ("the NCWA" in short) and sometime in 1995, the deceased workman suffered from serious jaundice and treated at Hindustan Lalpeth Colliery Dispensary, Chandrapur Area Hospital and so also by private Medical practitioner, on account of which, he was not able to attend his duties for some time and for such unavoidable absence from duty, the workman was submitting necessary medical certificate about his sickness issued by the doctors and such certificates were accepted by the project officer of Hindustan Lalpeth Colliery, while allowing the deceased workman to resume duties after his sickness and the workman again fell sick on 15-11-1997 for which he was advised to remain on medical leave by the Medical Supt., Hindustan Lalpeth Colliery Dispensary and an unfitness ticket was issued and the deceased workman though continued to suffer from serious problems arising out of jaundice, he was forcibly declared fit to resume duties from 20-11-1997 by issuing fitness certificate on 19-11-1997.

The further case of the union is that a charge sheet dated 11/12/01-1997 was issued against the deceased workman by the Manager, Hindustan Lalpeth colliery open cast mine, alleging unauthorized absence of the workman, to which the deceased workman submitted his reply stating his difficulties in not to be regular in his duties and a departmental enquiry was constituted and Shri R.H. Dingalwar was appointed as the enquiry officer, but as Shri Dingalwar was discharging the duties of a Labour Welfare Officer on the date of his appointment as the enquiry Officer, the same was violative of Rule 73(2) of the Mines (Central Rules), 1955 and as such, the enquiry conducted by Shri R.H. Dingalwar against the deceased workman were against the law and the departmental enquiry was conducted in a haste within a period of 20 days in four sittings and no fair and reasonable opportunity was given to the deceased workman by the

enquiry officer, while conducting the enquiry and copies of documents were not supplied well in advance and the enquiry officer did not consider the medical reports submitted by the deceased workman in the enquiry and the original documents were not produced by the management in the enquiry and as such, the enquiry conducted against the deceased workman was against the principles of natural justice and copy of the report of the enquiry officer and 2nd Show cause notice were not given to the deceased workman, before he was dismissed from service and therefore, the dismissal of the workman from services by order dated 18/20-11-1997 was unfair, unlawful and against the statute and once it is held that the order of dismissal is invalid and void, then it is to be deemed that the workman was in service till the date of his death, which occurred on 4-1-1998.

It is further pleaded by the union that in NCWA-IV, which was in operation from 1-7-1996 to 30-6-2001, there was provision for giving employment to one of the dependents of a workman who dies either in harness or due to mine accident and as on the date of the death of the deceased workman, the age of his widow was about 27 years, she was entitled for employment as the dependent of the workman.

It is also pleaded by the union that the deceased workman had made an appeal to the Chief General Manager, Chandrapur Area, the notified Appellate Authority, under the certified standing orders within the stipulated period of 45 days and also to the Sub-Area Manager and Manager of Hindustan Lalpeth open cast sub area on 2-12-1997 to reinstate him in service and under the certified standing orders of WCL, the Appellate Authority is required to give his decision on the appeal preferred by the workman within 45 days of the receipt of the appeal, but the appellate authority did not give his decision on the appeal filed by the deceased workman and it is settled law that a workman deemed to have been continued to remain a workman till the disposal of the appeal and as such, the deceased workman deserved to be considered to have been continued to remain as a workman and in terms of NCWA-VI, the window of the deceased workman is entitled to be given employment as the dependent of the deceased workman and the workman was placed on sick rolls of the colliery from 15-11-1997 and the management of WCL forcibly declared him fit only with mala fide intention to serve the dismissal order on him on 20-11-1997, although he was still suffering from serious disease of jaundice, which turned into cirrhosis and the deceased workman was under the treatment of Dr. Raju Sainani, after his dismissal and due to deterioration of the condition of the deceased workman, he was referred to Civil Hospital, Chandrapur on 3-1-1998 for treatment and he died at Civil Hospital on 4-1-1998 and on post mortem, it was found that the deceased workman died due to Hepatitis.

The further case of the union is that the widow of the deceased workman made representation on 22-12-1998 to the authorities requesting them to give her employment as dependent of her deceased husband, but the Sub Area Manager, Hindustan Lalpath open cast sub area by letter dated 6/11/01-1999 informed her about the refusal of the management to give her employment.

The further case of the union is that a letter dated 25-3-1999 was addressed to the General Manager, Chandrapur Area by them, requesting to give employment to the widow of deceased workman or pay monthly monetary compensation and on 1-4-2000, a reminder was issued to the Chief General Manager, Chandrapur Area to give decision on the letter dated 25-3-1999 and the Dy. Chief Personnel Manager, Chandrapur Area by his letter dated 18/21-5-2000 informed the union denying to give employment to the widow of deceased workman, Smt. Padma or pay her monthly monetary compensation, so the union on 21-09-2001 submitted a letter to the Chairman-cum-Managing Director, WCL, Nagpur, requesting to give employment or monetary compensation to Smt. Padma, but the Chairman did not convey his decision on the representation dated 21-9-2001 and as such, by letter dated 31-1-2002, they raised the industrial dispute before the RLC (C), Nagpur and the matter was seized by the RLC for conciliation and on failure of the conciliation, a failure report was submitted to the Central Government and the Central Government referred the dispute to this Tribunal for adjudication.

It is also pleaded by the union that the action of the party no. 1 in forcibly declaring the workman medically fit on 19-11-1997 to resume duty on 20-11-1997 and serving the dismissal order on 20-11-1997 without serving the second show cause notice and the copy of the enquiry report is against the principles of natural justice and is an act of mala fide and therefore, the dismissal is bad in law and deserve to be set aside.

The union has prayed to declare the order of dismissal passed against the deceased workman dated 20-11-1997 as illegal and to treat him to be in service till 4-1-1998, i.e. till the date of his death and to give employment to Smt. Padma, the widow of the deceased workman and to pay her the arrears wages w.e.f. 20-11-1997 or monetary compensation of Rs. 3000/- per month w.e.f. 20-11-1997.

3. The party no. 1 in their written statement have pleaded inter-alia that the deceased workman, Late Rajesh Pocham was working as driver in Hindustan Lalpath open cast mine of Chandrapur area and he was charge sheeted vide charge sheet dated 11/12/01-1997 for his habitual and unauthorized absence from duties since 5-1-1997 and the deceased workman submitted his reply to the charge sheet and as the same was found not to be satisfactory, domestic enquiry was constituted to enquire

in to the charge sheet and four sittings of the domestic enquiry were held and the deceased workman had participated in the enquiry fully and the enquiry was concluded on 23-02-1997 and the past record of the deceased workman was very poor and he was issued with 24 warning letters and three charge sheets and the records reveal that he was a habitual absentee and the domestic enquiry was held in a proper manner offering full opportunities to the deceased workman and the enquiry was fully fair and in accordance with the principles of natural justice and during the course of the enquiry, the deceased workman nowhere mentioned about his suffering from jaundice and to cover up his absence, he submitted different medical certificates from different doctors in which variety of reasons were mentioned and infact, he was in habit of consuming alcohol, which was supported by the contents of the discharge note dated 16-7-1997 and the charges were proved against him beyond doubt and on the basis of departmental enquiry and taking into consideration of his past attendance records, the services of the deceased workman was terminated w.e.f. 20-11-1997 and the deceased workman expired on 4-1-1998 and as the workman died after his dismissal from services, the question of offering any employment or monetary compensation to his wife, Smt. Padma does not arise.

It is further pleaded by the party no. 1 that the union has misrepresented about the facts that Shri R.H. Dingalwar, the enquiry officer was working as the Welfare Officer and one separate designated Personnel Manager, Shri S.N. Gohakar was functioning as LWO and issuance of second show cause notice would not have affected the outcome of the enquiry and the union has not alleged as to how and in what manner prejudice was caused to the deceased workman and as the deceased workman died after his dismissal from service, the provision of NCWA regarding providing of employment or payment of monetary compensation to the dependent is not applicable and dismissal of the deceased workman was proper and fully justified and legal and the reference is to be answered against the union.

4. It is necessary to mention here that in this reference, the moot question for consideration is regarding the validity or other wise of the refusal of the party no. 1 in giving employment or monetary compensation of Rs. 3000/- per month to Smt. Padam, the widow of the deceased workman, Rajesh Pocham Gumadwar and while deciding the said issue, the issue regarding the validity of the dismissal of the deceased workman is to be considered incidentally. It is also necessary to mention here that as the deceased workman had died prior to the raising of the dispute, instead of taking the validity of the departmental enquiry into consideration as a preliminary issue, all the issues involved in the reference are taken up for consideration together.

5. Besides placing reliance on documentary evidence, both the parties have adduced oral evidence in support of their respective claims. Smt. Padma, the widow of the deceased workman and Shri Mallaram Sateyya, the defence representative of the deceased workman in the departmental enquiry have been examined as the two witnesses on behalf of the union.

Shri Ramesh Hanumantrao Dingalwar, the enquiry officer, who had conducted the enquiry against the workman and Dr. A.K. Verma have been examined as the two witnesses by the party no. 1.

6. Smt. Padma in her evidence has stated that her husband was working as a driver at Hindustan Lalpath Open Cast Mine and her husband died on 4-1-1998 and after the death of her husband, she applied for giving her employment, but the management did not agree to give her employment, as her husband died after his dismissal for services and her husband was dismissed from service on 20-11-1997 and at that time her husband was under treatment at the colliery dispensary and hospital for jaundice and on 19-11-1997, her husband was on sick roll, but only to serve the notice of dismissal on her husband, her husband was falsely shown to be fit to join duty from 20-11-1997 in the medical certificate issued on 19-11-1997 and as such, the order of dismissal is illegal and as her husband was under treatment at colliery hospital for jaundice, the charge of unauthorized absence levelled against her husband was false and illegal and her husband was dismissed from service on false and illegal allegations and the post mortem report of her husband disclosed that her husband died due to jaundice and she is entitled for employment or monetary compensation in case of any difficulty to provide her employment, then her elder son is entitled for employment.

On perusal of the evidence of Smt. Padma, it is found that in her evidence, she has not at all challenged the legality or otherwise of the departmental enquiry.

7. Mallaram Sateyya, the witness no. 2 examined by the union, in his evidence has stated that in the year 1995, the deceased workman suffered from jaundice and was treated in the colliery dispensary and due to suffering from jaundice and sustaining injury on his hand, he was not able to perform his duty and he was advised by the doctor of Hindustan Lalpath Dispensary to take rest and he was also referred to Chandrapur Area Hospital for treatment and when he was suffering seriously from jaundice, management submitted the charge sheet dated 11/12/01-1997 against him for remaining absent from duty unauthorisedly. This witness has reiterated the facts mentioned in the statement of claim, in his evidence on affidavit. However, in his cross-examination, this witness has admitted that he was the co-worker of Rajesh in the departmental enquiry initiated against him and no document has been filed to show that Shri R.H. Dingalwar

was the Labour Officer, when he was appointed as the enquiry officer for making the enquiry against Rajesh and he did not file any objection before the enquiry officer that the enquiry was being conducted in a haste and he cannot quote the provision in the Standing Order to show that an employee can be deemed to be in service till his appeal is not disposed of by the appellate authority.

8. Shri Ramesh Hanumantrao Dingalwar, examined as witness no. 1 by the party no. 1, in his evidence has stated that he was appointed as the enquiry officer to conduct the enquiry against Rajesh, the deceased workman and his appointment as the enquiry officer was not protested either by the workman or the union on any ground and the workman had attended the enquiry on all the dates with his co-worker and the proceedings of the enquiry were recorded in Hindi language and the enquiry was conducted by him giving every opportunity to both the parties to put up their respective cases and the enquiry was held in a fair and proper manner and the enquiry was closed on 23-02-1997 with the consent of the parties and the day to day proceedings were signed by the workman and his co-worker and he submitted his report holding the workman guilty of the charges, on 10/18-3-1997 and he was not carrying any bias or prejudice against the workman and his report was based on objective analysis of the evidence adduced before him.

In his cross-examination, this witness has stated that he, conducted the departmental enquiry against the workman according to the certified standing orders of WCL and the enquiry was completed within 20 days and in four sittings and there is nothing in the proceedings of the enquiry to show that the copies of the documents were supplied to the workman. It is to be mentioned here that during the cross-examination of this witness, even no suggestion was given to him that he was working as a labour officer.

9. The other witness examined by the party no. 1 is doctor A.K. Verma, who has stated that the deceased workman was treated and admitted in the Area Hospital from 14-11-1997 to 19-11-1997 and was declared fit on 20-11-1997 by the Area Hospital and the patient reported to Hindustan Lalpath Colliery Dispensary for obtaining fitness certificate and on reporting to him on 20-11-1997, he also examined the workman and found him fit for his duty and accordingly, he issued the fitness certificate on 20-11-1997. In the cross-examination of this witness also, no suggestion was given that the fitness certificate was issued forcibly.

10. During the course of the argument, it was submitted by the union representative that the enquiry conducted by the enquiry officer without explaining the procedure of the departmental enquiry is unfair and vitiated and the enquiry was vitiated due to non supply of documents and list of witnesses to the workman and as

no fair and proper opportunity was given to the workman to defend himself, the departmental enquiry is to be held as illegal and not in accordance with the principles of natural justice. It was further argued by the union representative that during the course of adducing evidence, the workman had informed the enquiry officer that due to disorder of liver, he was not able to attend duties at times and he was receiving treatment of his illness from colliery dispensary as well as from Chandrapur Area Hospital, but the enquiry officer did not ask the management representative to produce the documents regarding such treatment of the workman to verify the correctness of the submissions made by him and as the medical records were not verified, the conclusion drawn by the enquiry officer that the workman was absenting from duty without reasonable cause is therefore perverse and the enquiry officer did not assign sufficient reasons for arriving at the conclusion and for that also, the findings are perverse. It was further submitted by the union representative that clause 28.9 of the Standing Orders provides for supply of a copy of the enquiry report to the workman, before the punishment is imposed and it is clear from the evidence that such copy was not supplied to the workman, so the punishment of dismissal imposed against the workman is illegal and as the appeal preferred by the workman was not disposed of within the stipulated time as prescribed in the Standing Order and till disposal of the appeal, the workman was to be deemed as a workman and as such, one of his dependents entitled for employment as per the NCWA and therefore, the reference is to be answered in affirmative and Smt. Padma is entitled either to employment for monetary compensation.

11. On the other hand, it was submitted by the representative for the management that the enquiry against the deceased workman was conducted in a fair and proper way and in accordance with the principles of natural justice and the findings of the enquiry officer are not perverse and the same are based on the evidence adduced in the departmental enquiry and serious misconduct of remaining unauthorized absence was proved against the deceased workman in a properly held departmental enquiry and the industrial dispute has been raised after the death of the workman and as such, the reference is ab-initio void and the punishment is not shockingly disproportionate, there is no scope for the Tribunal to interfere with the punishment and as there is no provision in NCWA to provide employment or monetary compensation to the dependents of a dismissed workman. It was also argued that as the union has failed to show that the workman was prejudiced due to non-supply of the enquiry report, the action of the management is not vitiated.

In support of such contentions, reliance was placed by party no. 1 on the decisions reported in 1996 LAB IC-462 (SC) (B.C. Chaturvedi Vs. Union of India), 2003 LAB

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IC-757 (SC) (Regional Manager UPSRTC Vs. Hoti Lal), 2005 LAB IC-4158 (SC) (V. Ramana Vs. APSRTC), 2005 LAB IC-854 (SC) (Bharat Forge Co. Ltd. Vs. Uttam Manohar), 2008 LAB IC-415 (M/s. L & T Kalmastu Ltd. Vs. N. Udayakumar) and 1994 LAB IC-762 (Managing Director ECIL, Hyderabad Vs. Karunakar).

12. Perused the record including the documents of the departmental enquiry filed by the parties. From the materials on record, it is found that the deceased workman was served with the charge sheet and he filed his show cause to the charge sheet. The deceased workman also fully participated in the enquiry with his co-worker and in his presence, evidence was produced in the enquiry by the management. It is also found that the workman was also given chance to adduce evidence in his defence. The enquiry officer gave his findings basing in the evidence adduced in the enquiry. There is nothing on record to show that the enquiry conducted against the deceased workman was illegal or not in accordance with the principles of natural justice. The workman also failed to produce any evidence to show that he was prevented by sufficient cause for not attending the duty. There is also no material on record to hold that the findings of the enquiry officer are perverse. It is found from the record that the party no. 1 has not been able to show that the copy of the enquiry report was served on the deceased workman prior to the imposition of the punishment. However, it was neither been pleaded in the statement of claim nor been proved by adducing evidence by the union that any prejudice was caused to the workman due to non-supply of the enquiry report to him. Applying the principles enunciated by the Hon'ble Apex Court as reported in 1994 LAB IC-762 (Supra) to the present case in hand, it can be held that the action of the party cannot be said to be illegal.

13. On perusal of clause 30 of the Standing Orders it is found that the interpretation of the union representative that till the disposal of the appeal filed by the dismissed workman against the punishment imposed against him by the appellate authority, he is to be deemed as a workman is quite wrong. Such an interpretation cannot be entertained and it cannot be said that till the disposal of the appeal, the deceased workman should have been held as a workman.

14. From the materials on record, it is found that serious misconduct of remaining unauthorized absence from duty had been proved against the deceased workman in a properly conducted departmental enquiry. Hence, the punishment of dismissal from service imposed against the deceased workman cannot be said to be shockingly disproportionate.

15. It is the admitted case of the parties that the workman died after his dismissal from service. The provisions of providing employment or monetary

compensation to the dependents as provided in the NCWA are applicable only to the dependents of a workman, who dies in harness. There is no provision in the NCWA to provide employment or monetary compensation to the dependents of dismissed workman, who died after his dismissal from service. Hence, the widow of the deceased workman is not entitled to any relief. Hence, it is ordered :—

ORDER

The action of the management of M/s. Western Coalfields Ltd. of Hindustan Lalpath Colliery Open cast Project, Chandrapur Area is justified in dismissing the deceased workman Sh. Rajesh Pocham Gumadwar, Driver w.e.f. 20-11-1997 and whether the action of the said management in denying employment or payment of monetary compensation @ Rs. 3000/- P.M. to Smt. Padma, Widow of the said workman is justified. Smt. Padma, Widow of the said deceased workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3676.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 194/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/265/1997-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3676.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 194/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of WCL and their workmen, which was received by the Central Government on 3-12-2012.

[No. L-22012/265/1997-IR (C-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/194/2002 Date : 08-11-2012

Party No. 1 : The Sub Area Manager,
M/s. WCL, Dhoptala Open Cast
Sub Area PO : Sasti, Tah. Rajura,
Distt. Chandrapur (MS)

Versus

Party No. 2 : Shri Sukhu Prasad,
Secretary, Lal Zanda Coal Mines
Mazdoor Union (CITU),
Miners Qtr. No. 6/1,
Ballarpur Colliery,
Distt. Chandrapur (MS)

AWARD

(Dated : 8th November, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Deshraj Mangal, for adjudication, as per letter No. L-22012/265/97-IR(C-II) dated 23-10-2002, with the following Schedule :—

SCHEDULE

"Whether the action of the management of WCL in dismissing Shri Deshraj Mangal, Pit Munshi Gr. II of Sasti Colliery from services w.e.f. 12-6-1995 is legal and justified ? If not, to what relief he is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Deshraj Mangal ("the workman" in short), filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed their written statement.

The case of workman as presented in the statement of claim was that he was employed in Sasti Colliery till his dismissal from service and while he was working as a Pit Munshi in Sasti Colliery, he was served with a charge-sheet dated 4/5-1-1994 and charges under clauses 26.18, 26.27 and 26.43 of the certified standing orders of WCL were levelled against him and he refuted the charges by filing a reply on 10-1-1994 and the Party No. 1 appointed Shri Y. Krishna Shepuri as the enquiry officer to enquire into the charges levelled against him and the enquiry officer conducted the enquiry in a most illegal manner and he failed to supply copies of the documents relied by the management even after repeated request and the enquiry officer also did not give reasonable opportunity to him to defend himself in the enquiry and the enquiry officer failed to comply with the principles of natural justice while conducting the enquiry and the enquiry officer by his findings dated 28-1-1995 held that the charges levelled against him were proved beyond any doubt and on the basis of the findings of the enquiry officer, a show cause notice was issued to him on 7-6-1995 after approval of the punishment of his dismissal from service by the competent authority for the misconduct committed by him and on receipt of the show cause, notice he sent a letter to Party

No. 1 seeking 15 days time to submit a detailed reply and the same was duly acknowledged by Party No. 1 on 10-6-1995, but on 13-6-1995, the Party No. 1 issued an advertisement styled as "officer order" in the local newspaper, "Mahavidharbha" published from Chandrapur and in the office order, it was stated that he was dismissed from service with immediate effect and he did not receive the copy of the dismissal order dated 12-6-1995 and the office order also did not contain any reason of publishing the dismissal order in the Newspaper instead of serving the same on him by ordinary means and he was deprived of the opportunity to give his say against the findings of the enquiry officer and the dismissal order without affording opportunity to him to defend himself against the findings given by the enquiry officer is vitiated. The further case of the workman was that the enquiry officer failed to appreciate the fact that the charges levelled against him were not proved in the enquiry and he also failed to analyze the evidence given by the witnesses in its proper perspective and the findings of the enquiry officer are based on extraneous consideration not germane to the charges levelled against him and the order of punishment was also passed mechanically by the competent authority, without due application of mind and in colorable exercise of employer's right and the dismissal order is wholly illegal, unfair and arbitrary and the same is also grossly disproportionate to the quantum of charges framed against him.

The workman has prayed to set aside the order of punishment dated 12-6-1995 and for his reinstatement in service with full back wages and consequential benefits.

3. The Party No. 1 in their written statement have pleaded inter-alia that the services of the workman were dismissed w.e.f. 12-6-1995, whereas the present dispute was raised in the year 2002 i.e. after a lapse of about 7 years and as such, the dispute is highly belated and is not maintainable. It is further pleaded by Party No. 1 that while the workman was working as Pit Munshi in Sasti Colliery, he was issued with charge-sheet No. 3 dated 4/5-1-1994 under clauses 26.18, 26.27 and 26.43 of the certified standing orders and the allegations made against the workman were that on 16-12-1993 at around 5 PM Shri U. B. Parate, the Asstt. Colliery Manager, Sasti Colliery was at No. 2 colony to see off the safety inspection team and at about 5.10 PM, he got information from one Narsingh, Screen Tramer about falling of roof at 18 L Section, so immediately Shri Parate rushed to 18 L Section alongwith Shri A. S. Bapat, the under manager and while approaching 18 L Section, he met Shri Ramesh Chandra Bhagu, who was seriously injured and being carried on stretcher near 18 L/X cut, so he instructed Shri G. V. S. Prasad, the shift incharge to accompany Shri Ramesh Chandra to surface and then proceeded to 18 L Section/30 D and reached around 5.35 PM and found the workman, Shri Ajab Rao

Gangaram Dewalkar was partially covered by coal pieces due to fall of roof and mob of around 50 persons being led by the workman, Shri Deshraj Mangal was present there and Shri Parate enquired about the availability of stretcher in the Section and he was informed about availability of spare stretcher at first aid section and Shri Parate asked the Mining Sirdar, Shri R. R. Kota to give temporary support to avoid further fall of the roof and when he approached to rescue Shri Ajab Rao, the workman who was deployed to work at 57 D/TS, obstructed him from rescuing the person and created hindrance in doing temporary supporting work and the workman instead of helping Shri Parate in the job of rescuing the injured, started threatening him, stating that the injured would not to be allowed to taken out unless and until the arrival of the Manager and the Doctor at the spot and there would be dire consequences, in case of touching the injured workman, but inspite of the threatening, Shri Parate persuaded the overman and mining Sirdar and other workmen present there for rescue and recovery work and by that time, Shri R. N. Mishra, the Manager reached the place of accident and asked for recovery, but the workman obstructed Shri Mishra Physically to undertake the rescue work and at about 6.30 PM, Shri Parate started rescue and recovery work with the help of the under manager and Shri Tamamullai and Shri Vinod Babu and removed Shri Ajab Rao from the accident site by clearing the coal pieces and placed him at 20 LS between 31 D and 32 D and Shri Ajab Rao was examined by the doctor and was declared dead. The further case of Party No. 1 is that the workman submitted his reply to the charge-sheet and as the reply was found unsatisfactory, they decided to conduct a departmental enquiry against him and accordingly, Shri Y. Krishna Seopuri was appointed as the enquiry officer and the enquiry was conducted on various dates and the workman alongwith his coworker fully participated in the enquiry and the enquiry was conducted legal, properly and following the principles of natural justice and the enquiry officer submitted his report holding the workman guilty of the charges and the enquiry report was placed before the disciplinary authority for consideration and after examining the report with reference to the relevant document on record, the disciplinary authority agreed with the findings of the enquiry officer and issued the show cause notice dated 7-6-1995 to the workman and as no reply was received from the workman, his services were dismissed by order dated 12-6-1995 and the said office order was also published in the local newspaper, "Mahavidharbha". The further case of the Party No. 1 is that the union had made a representation requesting the management to reconsider the decision and the management vide letter dated 23-4-1994 intimated the union that in view of the seriousness of the misconduct committed by the workman, his case cannot be reconsidered and their action in dismissing the services of the workman was in the light of charges proved in the departmental enquiry and the

workman indulged in gross misconduct of interfering and preventing the management from rescue operation, when the life of workman was in danger and instead of extending any help to the management at the time of the accident, the workman created all sorts of obstacles and prevented the employees, who came forward to assist and help the management in the rescue operation and as the workman committed in human activity, their action is absolutely justified. It is further pleaded by the Party No. 1 that the workman was given ample opportunity to represent against the show cause notice issued against him and the findings of the enquiry officer are based on the materials on record and the same is legal and proper and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration. In support of his claim, the workman had examined himself as a witness. However, the learned advocate for the workman on 7-1-2011 filed a pursis stating that the workman doesn't challenge the validity of the enquiry. In view of the said pursis and taking into consideration the materials on record, vide order dated 4-3-2011, the departmental enquiry conducted against the workman was held to be legal, proper and by following the principles of natural justice.

5. It is necessary to mention here that during the pendency of the reference, the workman expired and as such, his legal heir i.e. his widow, namely, Smt. Janaki Devi Deshraj Mangal was substituted in his place as per order dated 29-6-2012.

6. At the time of argument, it was submitted by the learned advocate for the petitioner that the findings of the enquiry officer are perverse as the same are based on no evidence and are based on extraneous consideration and the punishment imposed against the deceased workman was too harsh and disproportionate to the charges alleged to be proved against him and as such, it is necessary to interfere with the punishment imposed against the deceased workman.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that the findings of the enquiry officer are not perverse and the findings are based on the evidence adduced by the parties in the enquiry and not any extraneous consideration. It was further submitted by the learned advocate for the Party No. 1 that the departmental enquiry conducted against the workman has already been held to be legal, proper and in accordance with the principles of natural justice by this Tribunal on 4-3-2011 and commission of serious and gross misconduct of obstructing the management in the rescue operation when the life of an employee was in danger was been proved against the workman in a properly conducted departmental

enquiry and the punishment imposed against the deceased workman cannot be said to be shockingly disproportionate and the order of the dismissal was passed in accordance with law and therefore, the same cannot be characterized as extreme or harsh and as such, there is no scope to interfere with the punishment imposed against the deceased workman.

In support of such contentions, the learned advocate for the Party No. 1 placed reliance on the decisions reported in 2004 (8) SCC-200 (Krishan Kali Tea Estate Vs. Akhil Bharatirya Chaha Mazdoor Sangh), 1995 II L.L.J. - 987 (Cement Corporation of India Vs. State of Himachal Pradesh and others), AIR 2010 SC-142 (Biscco Lawries Limited Vs. State of West Bengal), (1977) 2 SCC-491 (State of Haryana Vs. Ratan Singh), AIR 1988 SC-300 (Union of India Vs. B. K. Srivastava) and (1997) 6 SCC-75 (Commissioner of Police Vs. Jayasurian and another).

8. Before delving into the merit of the matter, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in different judgments in regard to the power of a Tribunal to interfere with the punishment imposed against a delinquent employee by the competent authority in a domestic enquiry.

In the decision reported in 2001 LAB IC/2367 (Syed Rahimuddin Vs. Director General, CISR) Hon'ble Apex Court have held that :—

“Disciplinary Enquiry :—Finding of fact-Interference—Permissible only when there is no material for the said conclusion : or that on the materials, the conclusion cannot be that of a reasonable man. Enquiry Officer dealing with Articles of charge chronologically and relevant materials on basis of which ultimate conclusion is arrived at. Findings of enquiry officer cannot be held to be findings base on no evidence. Bias of enquiry officer also not made out – Enquiry cannot be held to be vitiated.”

9. In the decision reported in AIR 1972 SC-2182 (M/s. The Benaras Electric Light and Power Co. Ltd. Vs. The Labour Court-II, Lucknow), the Hon'ble Apex Court have held that :—

“A finding recorded in a domestic enquiry cannot be characterized as perverse by the Labour Court unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of evidence adduced. In a domestic enquiry once a conclusion is deducted from the evidence, it is not permissible to assail the conclusion even though, it is possible for some other authority to arrive at a different conclusion on the same evidence.”

10. It is also well settled by the Hon'ble Apex Court in a number of decisions that :—

“A disciplinary proceeding is not a criminal trial. The Standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.

***** ***** *****

Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials. If the enquiry has been properly held, the question of adequacy or reliability of evidence cannot be canvassed before the High Court.”

***** ***** *****

The jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of Legislature or rules made under the proviso of Article 309 or the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

11. It is also settled beyond doubt by the Hon'ble Apex Court in a chain of decisions that :—

“The strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal”.

12. Now, the present case in hand is to be judged with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above.

On perusal of the materials on record, including the pleadings of the parties, it is found that there is no serious challenge in the statement of claim about the perversity of the findings of the enquiry officer. It is found from the materials on record that the findings of the enquiry officer are based on the evidence adduced in the enquiry. It is not a case of no evidence or that the conclusions drawn by the enquiry officer are totally against the materials on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

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So far the proportionality of punishment is concerned, from the record, it is found that commission of grave misconduct has been proved against the workman in a properly conducted departmental enquiry. The punishment of dismissal of the workman from of the services cannot be said to be shocking disproportionate to the serious misconduct proved against the workman. As such, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered :

ORDER

The action of the management of WCL in dismissing Shri Deshraj Mangal, Pit Munshi Gr.-II of Sasti Colliery from services w.e.f. 12-6-1995 is legal and justified. As the deceased workman is not entitled to any relief, his legal heir Smt. Janaki Deshraj Mangal is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3677.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रिम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 38/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/185/2003-आई आर (सी एम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3677.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the employers the management of Western Coalfields Limited, and their workmen, which was received by the Central Government on 3-12-2012.

[No. L-22012/185/2003-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/38/2004

Date : 16-11-2012

Party No. 1 : The General Manager,
Western Coal Fields Limited,
Kanhan Area, Post-Dungaria,
Chhindwara

Versus

Party No. 2 : Shri Sumant Pande,
S/o Ramdulare Pande,
R/O M.P. Khadan Mazdoor
Union Gudhi,
(Ambada) Tah. Junnardeo,
District Chhindwara, M.P.

AWARD

(Dated : 16th November, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their workman, Shri Sumant Pande for adjudication, as per letter No. L-22012/185/2003-IR(CM-II) dated 10-3-2004, with the following Schedule :—

"Whether the action of the management of the General Manager, Western Coalfields Limited, Kanhan Area, Post—Dungaria, District—Chhindwara in not correcting the date of birth 1-1-1956 in place of 1-1-1950 in the service records of Shri Sumant Pande S/o Ramdulare, Operator/Assistant Fitter on the basis of the school certificate is legal and justified ? If not, to what relief is the workman entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sumant Pande ("the workman" in short), filed the statement of claim and the management of Western Coalfields Limited ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was appointed as a helper on 24-1-1974 at Damua Colliery by Party No. 1 and in the year 1984, he was transferred to Nandan Washery as an operator and at that time, from the last pay certificate issued by the office of Party No. 1, he found his date of birth to have been mentioned as 1-1-1950, so he orally requested Party No. 1 number of times to correct his date of birth as 1-1-1956 or otherwise, he would be deprived of six years of legitimate service and ultimately, on 4-8-1987, he submitted an application to correct his date of birth in the service records and after submission of repeated representations for the same, on 3-8-1991, the Party No. 1 issued a letter to him asking to submit the original certificate issued by the Board and accordingly, he submitted the certificate issued by Rewa Board, in which his date of birth was mentioned as 1-1-1956. The further case of the workman is that inspite of submission of the Board certificate, the Party No. 1 did not correct his date of birth, so ultimately, the through his union made complaint before the ALC (Chhindwara), who seized the matter for conciliation, but as the conciliation

failed, the ALC submitted the failure report to the Government and the Central Government in their turn referred the dispute to the Tribunal for adjudication.

It is also pleaded by the workman that Party No. 1 has not disclosed basing on which document, they have written his date of birth as 1-1-1950 and it is the contention of Party No. 1 that at the time of his entry in service, in the "B form" register, his date of birth was mentioned as 1-1-1950 and on the basis of the same, his service record was prepared, but when his School certificate and all other documents clearly disclose his date of birth as 1-1-1956, there was no reason for Party No. 1 to record his date of birth as 1-1-1950 and even, the said recording had taken place erroneously, it is very much within the discretion of the Party No. 1 to correct his date of birth and refusal of Party No. 1 to correct his date of birth clearly shows that they are bent upon to deprive him from continuing in service.

The further case of the workman is that it is settled law that correction in the service record can be made, if it is requested well in advance and in his case, he made the request immediately, when he came to know about the wrong recording of the date of birth in the year 1987 and there is no justification for the Party No. 1 to hold his date of birth as 1-1-1950, in absence of any documentary evidence and despite of submission of documents by him showing his date of birth as 1-1-1956, the Party No. 1 refused to correct his date of birth with ulterior motive to deprive him from six years of service period and as such, it is necessary to declare his date of birth as 1-1-1956 in the service records and to give all the consequential benefits of service to him.

3. The Party No. 1 in their written statement has pleaded inter-alia that the workman was initially appointed as a General Mazdoor in the year 1974 and he was posted at Damua Colliery and subsequently, he was transferred to Nandan Washery and at the time of his initial appointment, his date of birth was recorded in the official records as 1-1-1950 and under the provisions of the Mines Act, certain statutory registers including "Register of employment", popularly known as Form – B register as provided under Rule 77 are required to be maintained and in Form – B register, personal particulars, such as, name, father's name, permanent address, date of birth, identification mark etc. of all the employees are to be mentioned and after the amendment of the Mines Act, sometime in the year 1984, photographs of the employees were affixed on the said Form – B register and no employee is permitted to work in a mine without there being entry in Form – B register and the said "Register" is the register of personal bio-datas of a workman concerned and entries in the said register are made on the basis of the information furnished by the workman concerned and the same are counter signed by the workman at the appropriate place in

the said register and in the Form – B register, the date of birth of the workman has been recorded as 1-1-1950 and his initial date of appointment has been recorded as 24-1-1974. It is further pleaded by Party No. 1 that in JBCCI – II, the union raised the issue of correction of date of birth of employees concerned and after detailed discussion, Implementation Instruction No. 37 was circulated and in the said Implementation Instruction, a procedure was prescribed for correction and review of the date of birth of the existing employee and at the 3rd meeting of the JBCCI – IV held on 19th and 20th August, 1987, the subject of completion of service records of the workers was further discussed and the Implementation Instruction No. 37 dated 5-2-1981 was revised and revised/modified instructions were issued, generally known as Implementation Instruction No. 76, giving the procedure for determination/verification of the age of the employees and as per the guide lines given in Implementation Instruction No. 37, in the year 1981, they displayed a notice in the notice board, stating there in the date of birth of each employee and specifically pointing out that any person having any objection to submit such objection within 90 days and in the said notice, the date of birth of the workman was shown as 1-1-1950 and inspite of the above facts, the workman did not submit any objection within the stipulated period and in the year 1987, the service excerpts of every employee were circulated and the employees were asked to give objection if any and in the service excerpts supplied to the workman, his date of birth was mentioned as 1-1-1950 and the workman by way of accepting the entries made there in, put his signature and submitted the same to the management without raising any objection what-so-ever and at the time of the transfer of the workman from Damua Colliery to Nandan Washiery, in his last pay certificate, his date of birth was mentioned as 25 years on 1-1-1975.

It is also pleaded by the Party No. 1 that employees working in Coal Industry are covered under the CMPF scheme and for the same, form "A" declaration is required to be submitted by the employee to become the member of the scheme and in form "A" submitted by the workman bearing his signature, his date of birth has been mentioned as 1-1-1950 and Coal India has introduced family pension scheme and to get the benefit of the said scheme, the employees are required to submit their family particulars and the workman has submitted his family particulars, wherein he has mentioned his date of birth as 1-1-1950 and the said document also bears the signature of the workman and the said declaration was submitted by the workman in the year 1995 and the workman has not submitted any document as mentioned in implementation Industriction Nos. 37 and 76 in support of his claim that his date of birth is 1-1-1956 and the workman did not raise any objection about his date of birth recorded in official records inspite of giving notice by the management in the

year 1981 and in 1987 and the workman raised the objection at the fag end of his service and in the light of the above facts and circumstances, the workman has no case and they have rightly entered the date of birth of the workman in various statutory records as 1-1-1950. It is also pleaded by the Party No. 1 that the Board's certificate of standard 8th submitted by the workman is not certified by the Board itself and the same has been issued by the head of a school in the year 1972 as mentioned in the said certificate and as such, the same cannot be treated as Authentic Board Certificate and even though according to the certificate produced by him, he had passed 8th board in 1972 and he had been in possession of the certificate at the time of his appointment i.e. on 24-1-1974, he neither produced the same as proof of his date of birth nor he mentioned about his educational qualification, which is evident from his original 'B' Form and the workman mentioned his age 25 years at the time of his appointment and accordingly, his date of birth was correctly mentioned as 1-1-1950 and besides signing various documents, such as Form 'A' and Pen 2 of CMPF, Form 'B' register, Service excerpt etc. where the date of birth of the workman has been clearly mentioned as 1-1-1950, the workman has also signed the forms PS – 3 and PS – 4 in regard to family declaration and nomination relating to Coal Mines Pension Scheme, 1998, in which he has clearly mentioned his date of birth as 1-1-1950 and on perusal of the said documents and taking into consideration the facts and circumstances of the case, it is crystal clear that the date of birth of the workman is 1-1-1950 and his claim that his date of birth is 1-1-1956 is false and fabricated and the workman for the first time raised the dispute in 2004 and prior to that the workman had neither raised any objection orally nor had made any representation about the same and it is the workman, who had declared his date of birth as 1-1-1950 at the time of initial appointment and he has confirmed the same, when he became the member of CMPF scheme and the claim made by him is nothing but afterthought and the workman is not entitled to any relief.

4. In order to prove their respective pleas, both the parties have adduced oral evidence, besides placing reliance on the documentary evidence.

The workman has examined himself as a witness in support of his claim. One Shri A.C. Kaushik, Personnel Manager (Legal), Kanhan Area of WCL has been examined as a witness by the Party No. 1. The examination-in-chief of the workman and so also the witness for the Party No. 1 is on affidavit.

In his examination-in-chief, the workman has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has admitted that on appointment, Form – B register and service register for every workman are prepared and the name, father's name, family particulars like married or unmarried, date of birth

and age are mentioned as per requirement and stated by the workman and both the said registers were prepared at the time of his appointment and he had informed his date of birth as well as his age at the time of his appointment, but he did not state his date of birth as 1-1-1950 and he had already passed 8th standard before joining the service and Form – B register, Ext. M-3 bears his signature and in the said register his date of birth has been mentioned as 1-1-1950. The workman has further stated in his cross-examination that circulars regarding correction of date of birth of the employees were issued in 1981 and 1987 and the circulars were displayed in the notice board having the date of birth and date of entry into service in respect of all the employees and objections were invited in case of any mistake in the same. He has further admitted that he had submitted two forms for Pension scheme as per Ex. M-6 and M-6A in the year 1995 and both the forms bear his signature and in those forms, the clerk who filled in the forms mentioned his date of birth as 1-1-1950 and he did not raise any objection regarding his date of birth at that time and Ext. M-7 is his Form – B register maintained by Coal Mines Authority Ltd. and Exts. M-8 and M-9 were filled in by him for nomination alongwith the pension papers and they bear his signature.

The workman in his cross-examination has further admitted that the Board School Certificate, Ext. W-5 produced by him was not signed by the District Education Officer and the same has been signed by the Principal of the school and the mark sheet, Ext. W-6 was issued by the school and bears the signature of the Principal of the school.

5. The witness for the management in his evidence has also reiterated the facts mentioned in the written statement. In his cross-examination, this witness has stated that at the time of his initial appointment, the workman had not filed any document in respect of his educational qualification, but the certificate filed by the workman shows that he has passed Class – VIII and according to the said certificate, the date of birth of the workman is 1-1-1956 and at the time of initial appointment of the workman, he had declared his age to be 25 years.

6. At the time of argument, it was submitted by the learned advocate for the workman that the date of birth of the workman has been wrongly recorded as 1-1-1950 instead of 1-1-1956 and the workman came to know about such wrong recording of his date of birth, from the last pay certificate issued at the time of his transfer to Nandan Washiery in the year 1984, thereafter he requested for change of his date of birth to Party No. 1 and produced the Middle pass certificate issued by the Board and mark sheet and as per Implementation Instruction No. 76, the Party No. 1 is duty bound to correct the date of birth, basing on the Board certificate produced by the workman and at the time of his initial appointment at Damua Colliery,

the workman did not declare his date of birth, but submitted the copy of his educational certificate showing his educational qualification and the Party No. 1 failed to follow the Industrial Employment Standing Order Act, 1946 and incorrectly entered the date of birth as 1-1-1950 instead of 1-1-1956 and as such, the reference is to be answered in favour of the workman.

In support of such contention, the learned advocate for the workman cited the decision reported in (2007) 3 JCR – 681 (Jhr) (Kamta Pandey Vs. M/s. BCCL and others).

It is necessary to mention here that though the learned advocate for the workman cited the aforesaid decision, such decision was not filed for perusal of this Tribunal.

7. Per contra, it was submitted by the learned advocate for the Party No. 1 that at the time of the initial appointment of the workman, as per his own statement, his date of birth was mentioned as 1-1-1950 in Form 'B' register and other records of the management of WCL and the workman under his own signature has also furnished his date of birth as 1-1-1950 as per Exts. M-6, M-6A, M-7, M-8 and M-9 [the Form 'A' of Coal Mines Provident Fund, Form 2 (Pen) of Coal Mines Family Pension Scheme, 1971, Form – B register of CMA Limited, Form PS 3 and Form PS 4 respectively] and the certificate and mark sheet produced by the workman are not authentic Board certificate or mark sheet as prescribed in Implementation Instruction No. 76 and as such, basing on the same, the date of birth of the workman cannot be changed. In support of such contention, the learned advocate for the Party No. 1 placed reliance on the unreported judgment of the Hon'ble High Court of Judicature at Jabalpur (M.P.) in Writ Petition No. 8094/2008 (T. Narayan Vs. Western Coalfields Limited).

It was further submitted by the learned advocate for the Party No. 1 that the workman raised the dispute about his date of birth at the fag end of his service and correction of date of birth in service record is not permissible at the fag end of the service of the employee and the workman is not entitled to any relief. In support of such contention, the learned advocate for the Party No. 1 placed reliance on the decisions reported in (2000) 8 SCC – 696 (G.M. Bharat Cooking Coal Ltd. Vs. Shil Kumar Dushad), 2007 (I) MPLJ – 286 (Surendra Singh Vs. State of M.P.), (1994) 6 SCC – 302 (State of T.N. Vs. T.V. Venugopal) and (2005) 6 SCC – 49 (State of U.P. Vs. Shiv Narain Upadhyaya).

8. First of all, I will take up the contention made by the learned advocate for the Party No. 1 regarding raising of the dispute by the workman at the fag end of his service.

On perusal of the documents Exts. W-VII to W-XIV and Ext. M-4 and the oral evidence of M.W. No. 1, it is found that the workman raised the dispute regarding correction of his date of birth at least from 6-6-1987 and not at the fag end of service. Hence, I find no force in the contention raised by the learned advocate for the Party No. 1 that the dispute regarding correction of age raised by the workman at the fag end of his service. Therefore, with respect, I am of the view that the judgments cited by the learned advocate for the Party No. 1 in this respect have no application to the present case in hand.

9. The case of the workman is that his actual date of birth as recorded in the Board Certificate is 1-1-1956, but Party No. 1 has recorded his date of birth incorrectly in his service records as 1-1-1950, contrary to the procedure laid down in Implementation Instruction No. 76. The workman in support of his contention has produced a Board Certificate and mark sheet (Exts. W-V and VI respectively) of passing Class VIII and in which, his date of birth has been mentioned as 1-1-1956.

On perusal of the materials on record, it is found that the date of birth of the workman has been recorded as 1-1-1950 in the service records including the statutory register, Form - B. It is also clear that the workman under his own signature furnished the same date of birth i.e. 1-1-1950 in Exts M-6 to M-9. It is also clear from the evidence on record that there is no variation on records of Party No. 1 in respect of the date of birth of the workman.

At this juncture, I think it necessary to mention that the submission made by the learned advocate for the workman that in Ext. M-4 the date of birth of the workman was written as 1-1-1956 and subsequently, the same was scored out and the date of birth was mentioned as 1-1-1950 does not hold good, as because, had the date of birth of the workman mentioned as 1-1-1956 in Ext. M-4, at the time of supply of the same to the workman, and subsequently the same been corrected as 1-1-1950, then the workman should not have mentioned to correct his date of birth as 1-1-1956 in the same.

10. Though the learned advocate for the workman submitted that at the time of the initial appointment, the workman did not disclose his date of birth, but submitted the copy of his educational certificate showing his educational qualification, the materials on record do not support such contention. The workman neither in his statement of claim nor in his evidence before the Tribunal has stated a single word about submission of such

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certificate at the time of his initial appointment. It is apparent from the materials on record and the averments made in the statement of claim by the workman that the said certificate was not produced by him at the time of entering into service.

11. Implementation Instruction No. 76, provides that wherever there is no variation in records such cases will not be re-opened unless there is a very glaring and appearing wrong entry brought to the notice of the management. It also further provides that in the case of the existing employees, Matriculation Certificate or Higher Secondary Certificate issued by the recognized Universities/Board or Middle pass certificate issued by the Board of Education and/or Department of Public Instruction and admit cards issued by the aforesaid Boards should be treated as correct, provided they were issued by the said Universities/Boards/Institutions prior to the date of employment.

In this case, as already mentioned above, there is no variance in records in regard to the date of birth of the workman. The workman has claimed to change the date of birth on the basis of Exts. W-V and W-VI, the Board Certificate and mark sheet of Class VIII. On perusal of Ext. W-V, it is found that the same is not a middle pass certificate issued by the Board of Education and/or Department of Public Instruction. The said certificate is signed by the principal of a school. Hence, the said certificate cannot be said to be certificate as required by Implementation Instruction No. 76.

In view of the aforesaid facts and circumstances of the case, the date of birth recorded in the service records of the workman as 1-1-1950 and which has been affirmed by himself under his own signature in Exts. M-6 to M-9, no fault can be found with the action of the Party No. 1 in not correcting the date of birth of the workman on the basis of the certificate produced by him. Hence, it is ordered :

ORDER

The action of the management of the General Manager, Western Coalfields Limited, Kanhan Area, Post-Dungaria District—Chhindwara in not correcting his date of birth as 1-1-1956 in place of 1-1-1950 in the service records of Shri Sumant Pande S/o Ramdulare, Operator/Assistant Fitter on the basis of the school certificate is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3678.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. गौरी ओपन कॉस्ट माइन सं. 1 के प्रबंधतंत्र के संबंद्ह नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 57/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[स. एल-22012/307/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3678.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Gouri Open Cast Mine No. 1 of WCL and their workman, which was received by the Central Government on 03-12-2012.

[No. L-22012/307/2004-IR (CM-II)]
B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/57/2005

Date : 6-11-2012

Party No. 1 : The Sub Area Manager,
Gouri Open Cast Mine No. 1
of WCL, Post-Gouri, Tehsil-
Rajura, Chandrapur (MS).

Versus

Party No. 2 : Shri Natthuji Raghoba Kawade,
R/o Povni, Post-Gouri, Tehsil-
Rajura, Chandrapur (MS)

AWARD

(Dated : 06th November, 2012)

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Gouri Open Cast Mine No. 1 of WCL and their workman, Shri Natthuji Raghoba Kawade, for

adjudication, as per letter No. L-22012/307/2004-IR (CM-II) dated 20-7-2005, with the following schedule :

SCHEDULE

"Whether the action of the management in relation to Gouri Sub Area of Western Coalfields Limited in terminating the services of Sh. Natthuji Raghoba Kawade, General Mazdoor Cat.-I of Gouri Open Cast Mine No. 1 vide office order No. Wekoli : Bashe : Gouri Ukshe : Gouri O.C. 1/Kha Aa Pra 337 dated 16-01-2004 is legal and justified ? If not, to what relief is the workman entitled ?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Natthuji Raghoba Kawade, ("the workman" in short) filed the statement of claim and the management of Gouri Sub Area of Western Coalfields Limited ("Party No. I" in short) filed the written statement.

The case of the workman as projected in the statement of claim is that he came to be appointed as a general mazdoor Cat-I and rendered honest service for nine years and on 4-7-2003, he took charge of the duty at the go-down of the mine in the third shift at 12.00 midnight, from Shri Nale, who was on duty in the second shift at the same place and he performed his duty very diligently and vigilantly, but astonishingly, he received the charge sheet and suspension order dated 6-7-2003 and in the charge sheet, false, frivolous and baseless allegations were made against him and he was charged with international neglect in duty and due to such neglect, theft of Company's property had taken place from the store room and on 8-7-2003, he submitted his reply to the charge sheet, denying the charges levelled against him and explained the facts and circumstances of the case, but his reply was not considered and a departmental enquiry was ordered and party no. 1 appointed an enquiry officer, who was of biased mind and partial and the departmental inquiry was conducted in a farcical manner in a haste and principles of natural justice were not observed and his signatures were taken on papers, without intimating him the nature of the said papers and in the inquiry, management failed to prove that the alleged theft of some articles had taken place during his duty hours and he was made a scapegoat and was victimized by party no. 1. It is the further case of the workman that the findings of the Enquiry Officer are perverse and not sustainable in law and the conclusions arrived at by the Inquiry Officer holding him guilty of the charges are baseless, irrational and mischievous and the Inquiry Officer failed to consider the matrix facts and circumstances of the case and he was not given fair opportunity to defend himself and material witnesses were not examined to ascertain the truth and his past service record was clean and unblemished and the dismissal order dated 16-1-2004 passed by the party no. 1 is arbitrary,

illegal and tainted by way of victimization and party no. 1 was engaged in unfair labour practice as contemplated under item 5(a)(b)(c)(d)(f) and (g) of Schedule-V of the Act and the punishment is absolutely disproportionate and repugnant to well settled principles of law and directive of the Hon'ble Apex Court and Hon'ble High Courts.

The workman has prayed to set aside the order dated 16-1-2004 and to reinstate him in service with continuity and full back wages.

3. The party no. 1 in their written statement have pleaded inter alia that the workman was initially appointed as a general mazdoor cat-I vide order dated 17/20-10-94 and he was working as Chowkidar and was posted at Gouri OCM-I to guard the office premises and go-down/store and on 4-7-2004, he was on duty in the third shift and on 5-7-2003 at about 9.00 a.m., Shri D.B. Gandey, the Chief Store Keeper broke open the seal of the store for inspection of the materials kept in the go-down/store and found the roof of the store to have been broken and articles worth Rs. 72,350.08 were stolen and as such, charge sheet dated 6-7-2003 was issued against the workman, under clause 26.5 of the Standing Orders for "willful neglect of work" and the workman was kept under suspension during the pendency of the disciplinary action and the workman submitted his reply to the charge sheet and as the said reply was found to be unsatisfactory, it was decided to conduct a departmental enquiry and Shri R. Bhardwaj was appointed as the Enquiry Officer and the Enquiry Officer conducted the enquiry impartially and observing the principles of natural justice and the witness for the management was examined in presence of the workman and his co-worker and he was cross-examined by the co-worker of the workman and the workman was given the chance to adduce evidence in his defence and the workman examined himself and one Sri Manohar Mishra in his defence and the workman also submitted his say in writing on 7-10-2003 and the Enquiry Officer submitted his report holding the workman guilty of the charges to the Competent Authority and the Competent Authority after considering the report and the proceedings of the enquiry was satisfied that the enquiry was conducted properly and by following the principles of natural justice and by order dated 16-1-2004, dismissed the workman from services and the punishment imposed against the workman is just and proper and no illegality was committed by them and the workman is not entitled to any relief.

4. As this is a case of termination of the workman from services, after holding a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 20-7-2012, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. In this case, no oral evidence was adduced by the parties. The workman has filed the copies of his appointment order, charge sheet and order of suspension, his reply to the charge sheet, his reply dated 16-11-2003 and order of dismissal dated 16-1-2004. Party No. 1 has filed the copies of the entire departmental proceedings. It is necessary to mention here that as the workman did not appear on 22-6-2012 to take part in the hearing of the case, order was passed on that date to proceed with the case ex parte against him.

6. Before delving into the merit of the matter, I think it necessary to mention the principles envisaged by the Hon'ble Apex Court in different judgments in regard to the jurisdiction and power of the Tribunal to interfere with the findings in a departmental enquiry and punishment imposed against the delinquent workman.

In the decision reported in 2001 LAB IC-2367 (Syed Rahimuddin Vs. Director General, CISR) the Hon'ble Apex Court have held that :

"Disciplinary Enquiry : -Finding of fact-Interference-Permissible only when there is no material for the said conclusion : or that on the materials, the conclusion cannot be that of a reasonable man. Enquiry Officer dealing with Articles of charge chronologically and relevant materials on basis of which ultimate conclusion is arrived at. Findings of enquiry officer cannot be held to be findings base on no evidence. Bias of enquiry officer also not made out-Enquiry cannot be held to be vitiated."

In the decision reported in AIR 1972 SC-2182 (M/s. The Benaras Electric Light & Power Co. Ltd. Vs. The Labour Court-II, Lucknow), the Hon'ble Apex Court have held that :

"A finding recorded in a domestic enquiry cannot be characterized as perverse by the Labour Court unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of evidence adduced. In a domestic enquiry once a conclusion is deducted from the evidence, it is not permissible to assail the conclusion even though, it is possible for some other authority to arrive at a different conclusion on the same evidence."

7. It is also well settled by the Hon'ble Apex Court in a number of decisions that :

"A disciplinary proceeding is not a criminal trial. The Standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt."

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where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials. If the enquiry has been properly held, the question of adequacy or reliability of evidence cannot be canvassed before the High Court."

*** *** *** ***

The jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of Legislature or rules made under the proviso of Article 309 or the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

8. It is also settled beyond doubt by the Hon'ble Apex Court in a chain of decisions that :

"The strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal."

9. Now, the present case in hand is to be judged with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above.

On perusal of the materials on record, including the pleadings of the parties, it is found that nothing has been mentioned in the statement of claim as to how the findings of the enquiry officer are perverse. It is found from the materials on record that the findings of the enquiry officer are based on the evidence adduced in the enquiry. It is not a case of no evidence or that the conclusions drawn by the enquiry officer are totally against the materials on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

So far the proportionality of punishment is concerned, from the record, it is found that commission of grave misconduct has been proved against the workman in a properly conducted departmental enquiry. The punishment of termination of the services of the workman cannot be said to be shocking disproportionate to the

serious misconduct proved against him. As such, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered :

ORDER

The action of the management in relation to Gouri Sub Area of Western Coalfields Limited in terminating the services of Sh. Natthuji Raghoba Kawade, General Mazdoor Cat. 1 of Gouri Open Cast Mine No. 1 vide office Order No. Wekoli : Bhasc : Gouri Ukshe : Gouri O.C.-1/Kha Aa Pra 337 dated 16-1-2004 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3679.—ऑड्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑड्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 34/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/31/2009-आई आर (सीएम-II)]

बी. एम. पट्टनायक, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3679.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Wani North Area of WCL, and their workman, received by the Central Government on 03-12-2012.

[No. L-22012/31/2009-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/34/2009

Party No. 1 : The Chief General Manager,
Wani Area of WCL,
Post Bhalar Township,
Tehsil-Wani,
Yavatmal (MS).

Versus

Party No. 2 : The Secretary,
Sanyukta Khadan Mazdoor Sangh
(AITUC),
At Post-Pimpalgaon,
Tehsil-Wani,
Yavatmal (MS).

AWARD

(Dated : 20th November, 2012)

In exercise of the powers conferred by clause (d) of Sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Sanjay S. Taksale, for adjudication, as per letter No. L-22012/31/2009-IR (CM-II) dated 13-10-2009, for adjudication with the following schedule :

SCHEDULE

"Whether the action of the management of M/s. WCL in not promoting Shri Sanjay S. Taksale, Sr. Mechanic to the post of Foreman, Mech/Excv-Gr. B (T&S) allegedly ignoring his seniority etc. is legal and justified? To what relief is the claimant entitled for?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union "Sanyukta Khadan Mazdoor Sangh (AITUC)", ("the union" in short) filed the statement of claim, on behalf of the workman, Shri Sanjay S. Taksale, ("the workmen" in short) stating that the workman is entitled for promotion to the post of Foreman, Grade-B (T&S) from 15-11-2008 and all other consequential reliefs.

3. The management of WCL, ("Party no. 1" in short) filed the written statement pleading inter-alia that the workman is not entitled for the promotion as claimed by him.

4. During the pendency of reference i.e. 20-11-2012 the representatives for the parties filed a joint applications stating therein that there was a amicable settlement between both the parties and the workman has already been given promotion to the post of Foreman, Grade-B (T&S) vide office order no. 1197 dated 30-03-2011. As the settlement arrived at by the parties is a legal settlement, the application was allowed. As the industrial dispute has already been resolved by way of a settlement, it is necessary to pass a "compromise" award. Hence, it is ordered :—

4636 GI/12-14

ORDER

The reference may be treated as "compromise" award. The application dated 20-11-2012 and copy of the office order dated 30-03-2011 are made part of the award.

J.P. CHAND, Presiding Officer

BEFORE THE HON'BLE PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT NAGPUR

Ref. Case No. CGIT/NGP/34/2009.

Secretary, S.K.M.S. (AITUC)

V/s.

Western Coal Fields Ltd.

JOINT PETITION FOR COMPROMISE AWARD

In the above matter, it is most respectfully submitted that during the pendency of the matter before the Hon'ble Tribunal, the matter has been negotiated by the parties for an amicable settlement.

Since the workman namely Sanjay S. Taksale has already been promoted to the post of T&S Grade 'B' (Foreman Mechanical/Excavation) for which the claim had been made, the issue stands settled. Office Order No. 1197 dt. 30-3-2011 to this effect is enclosed.

It is, therefore, jointly prayed that the Reference may graciously be accepted and Awarded as No Dispute Award.

Submitted for gracious acceptance and order.

For the Workman : For the employer

1. Sanjay S. Taksale—Foreman Sr. Manager (Personnel)
T&S Grade 'B', Pimpalgaon AHQ, Wani North Area,
OC Mines of W.C. Ltd. WCL

2. Ashok T. Mende, Area
Secretary,
S.K.M.S. (AITUC), Wani
North Area, WCL

Place : Nagpur

Date : 20-11-2012

वेस्टर्न कोलफील्ड्स लिमिटेड

वणी नार्थ क्षेत्र

भालर वसाहत, पो. भालर, तह. वणी, जि. यवतमाल

वेकोली/वनाक्षे/कार्मिक/पदोन्नती/1197

दि. 30-3-2011

कार्यालय आदेश

विभागीय पदोन्नति समिति की अनुशंसा पर वणी नार्थ क्षेत्र के नियन्त्रित कर्मचारियों की पदोन्नति एवं द्वितीय राकोड़े सं-8 के वेतनमान में उनके नाम के सामने दर्शाये अनुसार पदनाम/ग्रेड में की

जाती है। इस पदोन्नति पर वे अपने वर्तमान कार्यस्थल पर ही पदस्थ रहेंगे।

अ. कर्मचारी का क्र. नाम	वर्तमान कार्यस्थल	वर्तमान पदनाम/ग्रेड	पदोन्नति पर पद/ग्रेड
1. श्री बी.एस. मनवर	उकणी उप- क्षेत्र	सिनिई.पी. मेक्सानिक एक्सा कॉर्ट- A	फोरमैन (मेक्सा)/ एक्सा T&S Gr. B
2. श्री संजय एस. ताकसाले	पीपलगांव उपक्षेत्र	सिनिई.पी. मेक्सानिक एक्सा कॉर्ट A	फोरमैन (मेक्सा)/ एक्सा T&S Gr. B
3. श्री एन.जी. हरण जुनाड ओसी		सिनिई.पी. मेक्सानिक एक्सा कॉर्ट- A	फोरमैन (मेक्सा)/ एक्सा T&S Gr. B

यह पदोन्नती, आदेश जारी करने की तिथि से नोशनली प्रभावी होंगी तथा वित्तीय लाभ पदोन्नत पद में कार्यग्रहण करने की तिथि से देश होगा।

उक्त कर्मचारियों द्वारा पदोन्नत पद का कार्यभार ग्रहण करने की तिथि से वे छ: माह तक परिविक्षा काल में होंगे, परिविक्षा अवधि के दौरान उनका कार्य निष्पादन आदि संतोषजनक पाये जाने पर उनका पदोन्नत पद पर स्थायीकरण किया जायेगा।

यह सक्षम अधिकारी के अनुमोदन से जारी किया जाता है।

ह/-

मुख्य प्रबंधक (कार्मिक),
वणी नॉर्थ

स्थान : पिंपलगांव उपक्षेत्र
आवाक नं. 828

दिनांक : 13-5-2011

नई दिल्ली, 3 दिसम्बर, 2012

का.आ. 3680.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डॉक्यूसी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 259/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-12-2012 को प्राप्त हुआ था।

[सं. एल-22012/15/2000-आई आर (सीएम-II)]
बी.एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd December, 2012

S.O. 3680.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 259/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of WCL and

their workman, received by the Central Government on 03-12-2012.

[No. L-22012/15/2000-IR (CM-II)]
B.M. PATNAIK, Section Officer.

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/259/2000

Date : 9-11-2012

Party No. 1 : The General Manager,
WCL Pench Area, PO : Parasia,
Distt. Chhindwara, (MP).

Versus

Party No. 2 : Shri Mahesh Sulkhey,
S/o Yashwant Rao, Divya Nagar,
PO : Palachouri, Tah. Junnardeo,
Distt. Chhindwara, (MP).

AWARD

(Dated : 9th November, 2012)

In exercise of the powers conferred by clause (d) of Sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers in relation to the management of WCL Pench Area and their workman, Shri Mahesh Sulkhey, for adjudication, as per letter No. L-22012/15/2000-IR (CM-II) dated 25-8-2000, with the following Schedule :

SCHEDULE

"Whether the action of the management of WCL, Pench Area, PO : Parasia, Distt. Chhindwara (MP) in not reinstating Shri Mahesh Sulkhey S/o Yashwant Rao, Driver of G.M. Office, WCL, Pench Area in service is justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Mahesh Sulkhey, ("the workman" in short) filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed their written statement.

The case of workman as presented in the statement of claim was that he was appointed as a car driver w.e.f. 1-1-1976 by party no. 1 and was posted at Eklera Sub Area of Pench Area and later on he was transferred to the office of General Manager, Pench Area Parasia and continued to work there as a driver upto 30-12-1991 and he applied for leave for 2 days i.e. 3-11-1991 and 4-11-1991 for going to his village, Balaghat to celebrate "Diwali" festival and the

leave was duly sanctioned by the Dy. Chief Personnel Manager and 5-11-1991 and 6-1-1991 were paid holidays for Diwali and while he was in his village, he suffered from some mental disease after Diwali, so he could not able to report for duty after the leave period and the party no. 1 was informed about the same by his leave application dated 12-11-1991 and he was treated upto 20-12-1991 and got some relief, so he went personally for getting his leave sanctioned for further treatment at Balaghat and met the Deputy Chief Personnel Manager, Pench Area, Shri R.K. Singh on 20-12-1991, for sanction of leave and Shri Singh advised him to submit his leave application in dispatch section and accordingly, he submitted the leave application in dispatch section, which was duly received and two hours thereafter, he again approached the Deputy Chief Personnel Manager to sanction his leave application, but the Deputy Chief Personnel Manager instead of sanctioning the leave, shouted at him at the top of his voice, as a result of which, he suffered from mental shock and nervous breakdown and there was an attack of mental disease and taking advantage of his such mental sickness, the Dy. Personnel Manager took his signature on a letter written in English and the contents of the said letter was not read over and explained to him in Hindi, the language in which he was able to read, write and understand and his signature was taken on the said letter by fraud and receipt with mala fide intention to victimize him and the Dy. Chief Personnel Manager took his signature on 20-12-1991 on his resignation letter written in English, which was not understood by him and party no. 1 was fully aware that he was suffering from mental disease, in view of the submission of his leave applications dated 12-11-1991 and 20-12-1991, in which it was clearly mentioned that he was suffering from mental illness and under such circumstances, the resignation letter could not have been accepted and the resignation letter was accepted by the Dy. Chief Personnel Manager hurriedly, just after one or two hours of the submission of the same, which was highly illegal and against all the legal norms and he signed on the letter thinking that his leave application dated 20-12-1991 was sanctioned and he came to know from the letter issued to him by the Deputy Chief Personnel Manager that the letter signed by him was not leave sanction letter, but his resignation letter and as it was already 5 PM on 20-12-1991, on the next day i.e. 21-12-1991, he wrote a letter to the General Manager, Pench Area about the Dy. CPM to have obtained the resignation letter from him by fraud and to cancel the resignation letter and to allow him to resume duty as driver, but no action was taken in the matter and he continued to request the party no. 1 to take him on duty vide his letter dated 27-5-1992, 28-6-1992, 18-2-1994, 20-1-1995, 15-2-1996, 19-3-1997 and 14-7-1997, but the party no. 1 did not consider his case and as such, he filed an application before the Asstt. Labour Commissioner (Central), Chhindwara and as the conciliation failed, failure report was submitted to

the Central Government and the reference was made by the Central Government to the Tribunal for adjudication and the action of the party no. 1 is highly illegal, irrational, arbitrary and mala fide.

The workman had prayed for his reinstatement in service with continuity and full back wages.

3. The party no. 1 in their written statement have pleaded inter-alia that the reference has been made by the Central Government assuming certain facts which did not exist and the reference has been made mechanically without application of mind and without considering the relevant materials placed before them and the terms of reference are highly prejudicial to them and bad in law and as there was no termination, the question of reinstatement does not arise and after resignation from the services, no relationship of employer employee existed between them and the workman and therefore, the order of reference is illegal and bad in law and the workman had resigned from services w.e.f. 20-12-1991, where as the present dispute was raised on 5-4-1999 i.e. after a lapse of about 8 years and the dispute is highly belated and on the said ground alone, the reference is not maintainable.

The further case of the party no. 1 is that that workman was employed in GM. Office, WCL, Pench Area as a driver and he submitted his resignation on 20-12-1991, which was accepted by the management and communicated to him vide No. WCL/Pench/P/IMP/6/1648/91 and thereafter, the workman claimed refund of his CMPF contribution and the CMPF claim was forwarded to CMPF commissioner and the CMPF contribution was paid to him by the concerned authority and the workman also claimed his gratuity amount with the management and as there was dispute with regard to the quantum of gratuity amount, the workman filed a case claiming gratuity before the Controlling Authority-cum-Asstt. Labour Commissioner, under the Payment of Gratuity Act, 1972, by submitting the prescribed form, "Form-N" and in para 3 of the said form, the workman had clearly mentioned that, "inspite of submitting resignation, gratuity has not been paid. Therefore, the management may be directed to pay the gratuity alongwith interest." and he had also mentioned in the aforesaid form that, "Application for resignation submitted on 31-12-1991" and after resigning from services, the workman collected all the dues due to him and at the time of settlement of his dues, the workman did not make any representation or any grievance to any authority regarding the resignation and the workman never reported sick and he also did not submit any application for sick leave as alleged and under the Rules, if an employee falls sick, he has to report to the Medical Officer of the company, who in turn issues sick certificate and on receipt of the sick report, the employee is granted sick leave as long as required and in this case, had the workman really fallen ill, he would have certainly reported to the

Medical Officer of the company and availed all the facilities provided by the company free of cost and as the workman did not report to the Medical Officer of the company, it can be held that he was not suffering from any disease as alleged and the workman submitted his resignation letter on 20-12-1991 and on receipt of the resignation, the management accepted the same, because of the fact that management cannot force or compel any employee to do the work and the Dy. CPM did not issue any letter to the workman and the G.M. Office had served the acceptance of resignation letter to the workman and the workman accepted the same without any objection whatsoever and he did not challenge the same for years together and the present dispute has been raised as a result of after thought, which has not legs to stand in the eye of law and the workman did not represent to the GM. on 21-12-1991 and there was no representation from the applicant to be decided by the management and the workman is not entitled to any relief.

4. In the rejoinder, it was mentioned by the workman that the Government has rightly decided his termination to be illegal and there existed employer and employee relationship and the reference has been made with application of mind after considering the relevant materials placed before the Government and he was suffering from mental sickness and he was not in a proper mental state to know the correct things and the Dy. CPM is not the competent authority to accept the resignation letter of the workman and though he had requested the management to cancel its illegal termination and allow him for duty vide letters dated 21-12-1991, 27-5-1992, 28-6-1992, 19-2-1994, 20-1-1995, 15-2-1996, 19-3-1997, 14-7-1997 and 13-4-2000, his representations were not considered and he was forced to withdraw his CMPF and gratuity amount to avoid starvation death of himself and his family members.

5. It is necessary to mention here that during the pendency of the reference, the workman died on 4-3-2009 and as such, his legal heirs, namely, Smt. Lalitabai (Widow of the deceased workman), Smt. Pooja, (Daughter), Smt. Priya (Daughter), Smt. Shraddha (daughter), Ku. Raksha (Daughter), Shiv Kumar (Son) and Ku. Shitala (Daughter) were substituted in his place.

6. Besides placing reliance on documentary evidence, both the parties have led oral evidence in support of their respective claims.

The workman examined himself as a witness in order to prove his case.

Shri B.C. Chakraborty, the accountant of G.M. Office, WCL, Pench Area, Shri I.K. Bhat, the accountant Asstt. of G.M. Office, WCL, Pench Area and Shri R.B. Mishra, Area Personnel Manager, Pench Area were examined as the three witnesses on behalf of the party no. 1.

7. In his examination-in-chief, which was on affidavit, the workman had reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman admitted that the documents, Exts. M-1, M-2, M-5 and M-6 bears his signatures.

8. Shri B.C. Chakraborty, the first witness for the party no. 1 in his evidence has stated that on 20-12-1991, the workman came to him and told him that due to his family problem, he is not in a position to continue in service and therefore, he has decided to resign from services and to go to his native village and to settle there and the workman also requested him to draft an application for resignation and accordingly, he drafted the application of resignation for the workman and Ext. M-1 is the copy of the said resignation letter. This witness has further stated that the said application was further witnessed by another co-worker, namely Shri I.K. Bhat. In his cross-examination, this witness has further stated that he had told the workman not to resign from services, but the workman asked him to write down the resignation letter and he wrote down the same as told by the workman and the workman had asked him to write the resignation letter in English and the workman was in good mental condition, when he asked him (the witness) to write down the resignation letter. The assertion of this witness that being asked by the workman, he wrote down the resignation letter has not at all been challenged in the cross-examination.

9. The witness no. 2 for party no. 1 in his evidence has stated that he is working as an Accounts Asstt. at G.M. Office since 1972 and he knew the workman, who was working as a driver in G.M. Office, Pench Area and workman came to accounts department on 20-12-1991 and requested Shri B.C. Chakraborty to draft an application for resignation, as he decided to resign from service due to domestic problem and Shri Chakraborty wrote the resignation letter as per the requested of the workman and he signed on the said application as a witness. In his cross-examination, this witness has stated that he had identified the signature of the workman. The assertion of the witness that the workman requested Shri Chakraborty to write the resignation letter on 20-12-1991 and as per the request of the workman Shri Chakraborty wrote the resignation letter and he signed the said application as a witness has also not been challenged in the cross-examination.

10. The witness no. 3 for the party no. 1 has stated that he is working as the Personnel Manager, Pench Area and the workman submitted his resignation on 20-12-1991, which was accepted by the management and was communicated to the workman and thereafter, the workman claimed his CMPF contribution and gratuity amount and collected all the dues due to him.

In his cross-examination, this witness has categorically stated that application submitted by the wife of the workman dated 12-11-1991 and leave application dated 20-11-1991 submitted by the workman were not received by the management.

11. At the time of argument, the learned advocate for the workman reiterated the facts mentioned in the statement of claim and rejoinder. It was also submitted by the learned advocate for the workman that it is clear from the evidence on record that the workman did not submit any resignation letter on 20-12-1991 and taking advantage of the mental sickness of the workman, the Dy. Chief Personnel Manager induced him to sign the resignation letter written in English and soon after the taking of the signature of the workman on the resignation letter, the resignation letter was accepted and as the workman signed the resignation letter due to the misrepresentation made by the Dy. CPM, the same is null and void and the Dy. CPM was not competent to accept the resignation of the workman and the CGM/GM of the area is the authority to appoint and accept resignation of an employee, therefore, the acceptance of the resignation dated 20-12-1991 is illegal and as soon as the workman came to know that his signature was taken on a resignation letter, on 21-12-1991, he filed an application for withdrawal of the resignation and as the withdrawal of the resignation was before the acceptance of the resignation by the appointing authority, the same is valid and the workman became fit for duty after treatment and submitted an application dated 27-5-1992 to allow him to join his duty along with the medical certificate, but the party no. 1 did not allow him to join duty. It was further submitted by the learned advocate for the workman that there was never any delay in raising the dispute and the workman had submitted number of applications starting from 21-12-1991 to 13-4-2000, to take him on duty, but the management failed to consider his case and the workman was forced to withdraw his gratuity and CMPF to avoid starvation and as such, the termination of the workman is illegal and the workman was entitled for reinstatement in service with continuity and full back wages till the date of death and therefore, the legal heirs of the workman are entitled for the full back wages and all other consequential benefits.

In support of such contentions, the learned advocate for the workman place reliance on the decisions reported in AIR 1983 Allahabad-9 (Ocenandan Vs. Chhote), 2000 LAB-IC-1871 (Lalitmohan Vs. Principal Kumaon Engineering College), AIR 1968 SC-956 (Ningawwa Vs. Byrappa), AIR 1978 SC-694 (Union of India Vs. Gopalchandra Mishra) and AIR 2000 SC-1401 (Narsinghpal Vs. Union of India).

12. Per contra, it was submitted by the learned advocate for the party no. 1 that it is clear from the evidence on record that the workman submitted his resignation voluntarily on 20-12-1991 and the resignation was accepted by the management and was communicated to

him as per Ext. M-2, duly signed by late R.K. Singh, the then Dy. Chief Personnel Manager, who expired on 2-5-1992 and after his resignation, the workman claimed refund of CMPF contribution and collected the same and the workman applied for gratuity and as there was certain dispute with regard to the quantum of gratuity, the workman filed a case before the controlling authority under the payment of Gratuity Act, 1972 in the prescribed form as per Exhts. M-3 and M-5 and in the said applications the workman had categorically mentioned that inspite of submitting his resignation, gratuity was not paid to him and as such, the management be directed to pay gratuity along with interest and the workman did not raise any objection for several years and for the first time, raised the dispute under Section 2A of the Act before the ALC on 15-4-1999, after a period of 8 years and as such, the claim is highly belated and cannot be entertained. It was also submitted by the learned advocate for the party No. 1 that the workman was not suffering from any disease and the workman did not produce any evidence to show that the alleged applications submitted by him were received by management and it is clear from the evidence of MWs 1, 2 and 3 that workman voluntarily submitted his resignation and there was no question of coercion or taking advantage of the mental illness of the workman by the Dy. CPM and as such, the workman was not entitled for any relief and the legal heirs of the deceased workman are also not entitled to any relief.

In support of the contention, the learned advocate for the party No. 1 placed reliance on the decisions reported in AIR 2000 SC-839 (Nedungadi Bank Ltd. Vs. K.P. Madhwan, 2000 LAB-IC-961 (K. Kesireddy Vs. Managing Director Andhra Pradesh State Warehousing Corp.), 1990 SCC-1808 (M/s. J.K. Cotton Spinning and Waving Mills Co. Ltd. Vs. State of UP) (1998) 5 SCC-461 (Nandkeswar Prasad Vs. Indian Farmers Fertilizers Co-operative Limited) and 2001 LLJ-130 (Rajasthan State Electricity Board Vs. Brijmohan).

13. Keeping in view the principles enunciated by the Hon'ble Courts in the decision cited by the learned advocates for the parties, now, the present case in hand is to be considered.

14. The main claim of the workman was that he suffered from mental illness, when he had gone to his native village to observe 'Diwali' and he was treated for his illness and his wife submitted an application for sick leave on 12-11-1991. However, not a single document has been filed to show that the workman had suffered from mental illness and he had taken medical treatment for the same. There is also no cogent evidence on record to show that the application dated 12-11-1991 submitted by the wife of the workman and the application filed by the workman for long leave on 20-12-1991 were received by the party no. 1. Though copies of the said applications have been filed there is nothing on record to show that such applications were received by party no. 1.

15. It is crystal clear from the evidence of MWs 1 to 3 that the workman on 20-12-1991 came to the office of the General Manager and requested MW 1, Sri Chakraborty to write a resignation letter stating that due to family problem he wanted to resign from service and accordingly, Shri Chakraborty wrote the resignation letter and the workman after signing the same in presence of the witnesses submitted the same in the office of the General Manager and the letter of acceptance of resignation was issued to the workman as per Ext. M-2 from the office of the Chief General Manager being signed by the Dy. Chief Personnel Manager. There is nothing on record to show that the withdrawal letter dated 21-12-1991 and the subsequent letters dated 26-05-1992 and 28-6-1992 was received by the party no. 1. From the evidence on record, it is found that the workman failed to prove that he suffered from mental sickness and he was treated for the same and the any leave application was submitted either by his wife on 12-11-1991 or by himself on 20-11-1991 and that taking advantage of his mental illness or by misrepresenting, his signature was taken by the Dy. Chief Personnel Manager on the resignation letter and that he had submitted an application on 21-11-1991 to the General Manager, Pench Area for withdrawal of the resignation. It is also found from the resignation letter, Ext. M-1 that no further date or notice period for acceptance of resignation had been mentioned by the workman in the same, so the acceptance of the resignation letter and relieved of the workman from the service cannot be said to be illegal. Moreover, clause 32.1 of the certified standing orders of party no. 1 provides that, "Workman (other than those who have executed a bond to serve the company for a specified period) who wish to leave the company's service, must give the company month's notice in the case of monthly rated workman and two week's notice in the case of the others. The management may, at its discretion, accept the resignation with immediate effect or the date before the expiry of the notice period". So, in view of such provision empowering the management to accept the resignation of a workman with immediate effect, the acceptance of the resignation of the workman immediately cannot be said to be illegal. It also clear from Exts. M-5 and M-6 that the workman had mentioned in those documents regarding submission of his resignation. In those documents the workman had not mentioned anything about taking of his resignation by the Dy. Chief Personnel Manager by misrepresenting him or by taking advantage of his mental illness. So, it is clear from the materials on record that the workman voluntarily submitted his resignation and the same was duly accepted by the party no. 1 and as such, there is no question of termination of his services or reinstatement in service.

16. Admittedly, the resignation of the workman was accepted on 20-12-1991 and the dispute was raised by the workman before the ALC(C) on 15-4-1999, about more than eight years after the date of resignation, which is highly belated. It is well settled by the Hon'ble Apex

Court, that submission of repeated of applications to the management cannot be said to be sufficient cause to explain the delay in raising the dispute. As the dispute has been raised after eight years, the reference can be held to be bad in law. (In this regard the decision reported in AIR 2000 SC-839 (Supra) may kindly be perused).

17. In view of the discussions made above and as the facts and the circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions cited by the learned advocate for the workman, with respect, I am of the view that the principles enunciated in the said decisions are not applicable to this case. Hence, it is ordered :—

ORDER

The action of the management of WCL in not reinstating the workman, Mahesh Sulkhey in service is justified. Neither the workman nor the legal heirs of the workman is/are entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 3681.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की भारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्व हॉक कार्गो सर्विसेज प्राइवेट लिमिटेड के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम प्लाकालय-1, नई दिल्ली के पंचाट (आई डी संख्या 122/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-12-2012 को प्राप्त हुआ था।

[सं. एल-20013/4/2012-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 5th December, 2012

S.O. 3681.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 122/2012) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi, now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Hawk Cargo Services Pvt. Ltd. and their workman, which was received by the Central Government on 5-12-2012.

[No. L-20013/4/2012-IR (CM-1)]

AJEEET KUMAR, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1,
KARKARDOOMA COURTS
COMPLEX, DELHI

I. D. No. 123/2012

Shri Vijender Kumar,
S/o. Shri Rati Ram,
R/o. Vill. Deenapur,
P.O. Najaigarh,
New Delhi-110043

... Workman

Versus

1. M/s. Hawk Cargo Services Pvt. Ltd.
IGI Airport, New Delhi - 100037
2. Airport Authority of India
A Block, Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi
3. M/s. DIAL, IGI Airport,
New Delhi
4. M/s. JAC Air Services Pvt. Ltd.
International Cargo Terminal,
New Delhi

... Management

AWARD

A contract labour was engaged by a contractor to discharge his obligation, relating into the contract entered into between him and the principal employer. The contract worker was irregular in attending to his duties. He was called upon to explain facts by the contractor. However, he did not mend his ways. His services were dispensed with by the contractor on 30-9-2008. The contract labour raised a demand for his reinstatement, which was not conceded to. Ultimately, he raised an industrial dispute before the Conciliation Officer. Since the matter could not be settled within a period of 45 days from the date of his filing application before the Conciliation Officer, he approached this Tribunal for adjudication of his grievances, under the provisions of Section 2A of the Industrial Disputes Act, 1947 (in short the Act).

2. Provisions of sub-section (2) of Section 2A of the Act creates a right in favour of a workman, whose services have been discharged, dismissed, retrenched or otherwise terminated by his employer, to approach this Tribunal for adjudication of his grievances, after expiry of 45 days from the date when he made an application before the Conciliation Officer for conciliation of his dispute. As projected by the claimant, he approached the Conciliation Officer on 20-3-2012. The Conciliation Officer took up the matter for conciliation on 4-5-2012, 8-6-2012, 16-7-2012, 24-8-2012, 24-9-2012 and 5-10-2012. Period of 45 days from the date of his moving the application before the Conciliation Officer stood completed on 4-5-2012. Thus, he invokes provisions of sub-section (2) of Section 2A of the Act for adjudication of his dispute, claiming that his services were dispensed with by M/s. Hawk Cargo Services Pvt. Ltd., the contractor, on 30-9-2012. Let the matter may be registered as an industrial dispute.

3. Shri Vishwaranjan Kumar, authorized representative for the claimant, was heard over the matter. As projected by the claimant, his services were terminated on 30-9-2008. His claim statement comes in conflict with provisions of sub-section (3) of Section 2A of the Act, wherein limitation period of three years has been provided to move an application under sub-section (2) of Section 2A of the Act, for adjudication of the dispute. As mentioned above, services of the claimant were terminated on 30-9-2008. He was entitled to approach this Tribunal for adjudication of the dispute, without being referred by the appropriate Government, under sub-section (1) of Section 10 of the Act, within a period of three years from the date of his discharge, dismissal, retrenchment or otherwise termination of his services. Therefore, claimant cannot approach this Tribunal now for adjudication of his grievances under sub-section (2) of Section 2A, since limitation, as provided in sub-section (3) of Section 2A of the Act, expired on 30-9-2011.

4. Claim statement filed is barred by time. Consequently, his claim statement is dismissed, being filed beyond period of limitation. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 29-10-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 3682.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारत गोल्ड माइन्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय, बैंगलोर के पंचायत (संदर्भ संख्या 91/89) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-11-2012 को प्राप्त हुआ था।

[सं. एल-43012/15/89-आई आर (एम)]
जोहन तोपनो, अधर सचिव

New Delhi, the 5th December, 2012

S.O. 3682.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/89) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Gold Mines Ltd. and their workman, which was received by the Central Government on 22-11-2012.

[No. L-43012/15/89-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

Dated : 19th September, 2011

Present : Shri S.N. NAVALGUND, Presiding Officer

C.R. No. 91/89

I Party

Shri G Muniswamy
(Since deceased repre-
sented by Kum. Rovajhi
Daughter of Late G.
Muniswamy and
Late Kamala Veni
deceased workman
and L R brought
on record vide
orders dated 19-7-11

II Party

The Managing Director
M/s. Bharat Gold Mines
Ltd.,
Suvarna Bhavan,
Oorgaum Post,
Kolar Gold Fields-563120

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this dispute vide order No. L-43012/15/89-IR (Misc.) dated 7-12-1989 for adjudication on the following Schedule :

SCHEDULE

“Whether the action taken by the management of Bharat Gold Mines Limited in retiring Shri G. Muniswamy from service with effect from 1-1-1986 is justifiable. If not, to what relief Shri Muniswamy would be entitled ?

2. After receipt of the reference on issue of notice to both the parties they entered their appearance through their respective advocates and the first party filed claim statement on 30-4-1990 and the second party filed counter Statement through its Chairman dated 12-10-1990

3. The dispute in this reference relates to the date of birth of the first party who came to be superannuated w.e.f. 1-1-1986. According to the first party he joined the second party as Labourer in the year 1945 and worked in that capacity till 1957 and from 1957 to 1969 as a Maistry, from 1969 to 1980 as a Mati and from 1980 to 1986 till he was superannuated as a Foreman. It is further claimed that his date of birth is 16-4-1931 as evidenced by his school records which was furnished at the time of joining the service but the second party while wrongly entering his date of birth in his service records as 1927 which was not at all brought to his notice till he was served with retirement notice w.e.f. 1-1-1986 which is factually incorrect and as

his date of birth is 16-4-1931 he completes 58 years of service by 15-4-1989 and could have continued in service till 1-1-1990. It is further asserted in the claim statement filed by the first party as per rules and regulations issued by the Second Party by order dated 4-3-1984 the age of superannuation of the workman worked on surface being 60 years and the age of superannuation in case of underground workmen would be 58 years and even though the services of some of the workman were transferred from underground to the surface after 28-3-1970 their services were ordered to be superannuated at the age of 58 years and the same was challenged they were allowed to work till attaining the age of 60 years such being the case he was entitled to continue in service till 1-1-1990. It is further asserted immediately on service of notice of retirement his request to reconsider his case and to continue his service till he attains the age of 60 years was not considered he filed a writ petition before the Hon'ble High Court of Karnataka and obtained an interim order of stay on the operation of the order of retirement and the said stay order when came to be vacated on 31-7-1986 with an observation that the matter should be agitated before the appropriate forum, he stopped the work. Thereafter the BGML employees union raised the Industrial Dispute before the ALC (C) claiming his retirement as premature retirement as his date of birth is 16-4-1931 and as the conciliation failed it resulted in this reference.

4. The second party in its counter statement contending that the first party while joining the services in the year 1945 had declared his year of birth as 1927 and had not furnished any records indicating his date of birth as 16-4-1931 as claimed by him, in his service records his year of birth being entered as 1927 without specifying the date and month, giving full benefit up to the end of the year, he served with notice of retirement from 1-1-1986 on attaining the superannuation age of 58 years. It is further contended the first party workman in the year 1964 filed PF declaration and nomination form wherein also his year of birth was noted as 1927 therefore, his contention that his date of birth is 16-4-1931 and that he is eligible to continue till 1-1-1990 is baseless and the company as per Reference No. 28 dated 30-3-1970 brought uniformity in the age of retirement at 58 years both for surface and underground employees and all surface workmen already in service on 28-3-1970 were allowed to continue in service upto the age of 60 years in accordance with rules then in force for such category and infact the retirement age of first party workman which was 55 years, as per circular dated 30th March 1970 the age of superannuation revised to 58 years therefore, he was entitle to continue till attaining the age of 60 years is baseless as he never worked on surface and factually he worked as an underground employee from the date of his employment till the date of his retirement. It is further contended that after his superannuation when his application to continue his

services till attaining the age of 60 years was not considered he filed a writ petition No. 19651 and 19652/85 and obtained interim order of stay for the operation of order of retirement and later after hearing its objection vacated the same on 31-7-1986, he worked for 7 months even after his retirement by virtue of interim stay order passed by the Hon'ble High Court of Karnataka and after disposal of that writ petition with observation that he has to approach a different forum for correction of his date of birth, raised this Industrial Dispute which resulted in this reference. Thus the management supported its action of retiring him w.e.f. 1-1-1986 and pray for rejection of the reference.

5. On these pleadings of the parties on behalf of the second party while examining Shri M. Balasubramanya, Personnel Manager, BGML on 3-5-1991 as MW1 service book of first party maintained by the management, PF nomination said to be in relation to the first party, notification dated 2nd December 1963 and 3rd April 1964 wherein employees were called upon to get their date of birth corrected as Ex. M1 to M4 respectively. Inter alia the first party while examining himself on 9-11-1993 as WW1 got marked transfer certificate issued by the Headmaster, Municipal Higher Secondary School, Gudiyattam (NA) said to be in relation to him dated 9-6-1945; Certified copy of order in Writ Petition No. 19651 and 19652/85 dated 16-4-1986 on the file of Hon'ble High Court of Karnataka granting stay against order of retirement; xerox copy of the final order passed in the said writ petition dated 29th June 1988 as Ex. W1 to W3 respectively.

6. With the above pleadings, oral and documentary evidence placed on record by both the sides this tribunal had passed award dated 26-11-1997 holding that the management is not justified in retiring the first party w.e.f. 1-1-1986 and that he was entitled to continue in service till 16-4-1989, accepting his case that his date of birth was 16-4-1931. When this award was challenged by the management in WP No. 6162/1998 on the file of Hon'ble High Court of Karnataka, by order dated 18-7-1998 the Hon'ble High Court was pleased to set aside the award and remit back the matter for fresh disposal for passing of fresh award after affording necessary opportunities to both the parties to lead evidence afresh if they so desire, with further observation the management is also free to ascertain the correctness of Ex. W1 transfer certificate produced by the worker in question and also apply for ascertainment of the age of the worker by medical examination. It is pertinent to note at this stage that though the award passed by this tribunal dated 26-11-1997 came to be set aside by the Hon'ble High Court by order dated 18-7-1998 with a direction to dispose off within six weeks from the date of receipt of the copy of the order, there was no communication of the order and records submitted by this tribunal were not returned and after several correspondences the Hon'ble High Court of Karnataka

returned the records along with the copy of the order dated 18-7-1998 on 16-6-2011 (received by this tribunal on 20-6-2011) stating that the records and the copy of the order were mis-sent to the Presiding Officer, Industrial Tribunal, Labour Court, K. G Road, Bangalore. Thus after receipt of the records and copy of the order of the writ petition the matter was restored to its original CR No. 91/89 and both sides were given opportunity to lead fresh evidence, if any, but both did not adduce any fresh evidence and argued on the same material placed before this tribunal before passing the earlier award. But the wife of the first party workman Smt. M. Revathy reporting that first party workman died on 11-8-2009 applied herself to come on record as his legal representative and as it was submitted the management has no objection she was allowed to come on record as legal representative and thereafter formally the daughter of the deceased workman has been examined as WW2 just to depose about the death of the first party workman leaving behind certain LRs. Thus again both the sides without leading any fresh evidence, once again addressed their arguments on the same material placed on record.

7. On appreciation of the pleadings, oral and documentary evidence brought on record, in the light of the arguments addressed before me by the learned advocates appearing for both the sides I am of the considered view that the second party was not justified in retiring the deceased first party workman from 1-1-1986 and that he ought to have been continued in service till 16-4-1989 for the following reasons :

REASONS

According to the second party the first party in the year 1945 while joining the services as labourer declared his year of birth as 1927 without specifying the date and month and inspite of issue of circulars dated 2nd December, 1963 and 3rd April, 1964 copy of which are at Ex. M3 and M4, the first party did not apply for correction of his date of birth and even in the year 1964 when the first party filed PF declaration and nomination form wherein also his year of birth was noted as 1927 his claim that his date of birth is 16-4-1931 and he was entitled for continuation of service till 1-1-1990 is baseless. Inter alia since it is the claim of the first party that as per his school records his date of birth is 16-4-1931 and the same was furnished by him at the time of joining the service the second party wrongly entering his year of birth as 1927 in the service records without affording him any opportunity for its correction retired him w.e.f. 1-1-1986, it has to be seen whether the second party proved the first party having declared his year of birth without specifying the date and month as 1927 while joining the service and that he is falsely claiming his date of birth as per

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school records being 16-4-1931. At the outset I may say that the second party has not seriously challenged the transfer certificate produced by the first party as his transfer certificate issued by the Headmaster, Municipal Higher Secondary School, Gadiyattam (NA) dated 9-6-1945 which is marked as Ex. W1. Inspite of the Hon'ble High Court while setting aside the earlier award passed by this tribunal and remanding the matter for fresh disposal observed "the management is also free to ascertain the correctness of Ex. W1 transfer certificate produced by the worker in question. Besides, it can also apply for ascertainment the age of the worker by medical examination of the worker", no attempt has been made by the management to ascertain the correctness of Ex. W1 transfer certificate produced by the workman in question. Of course before the copy of the order and records submitted to the High Court were returned, the first party workman was no more, there was no scope for the second party to apply for ascertainment of the age of worker for medical examination. Ex. W1 the transfer certificate relied upon by the first party being one issued by the Headmaster, Municipal Higher Secondary School, Gadiyattam (NA) dated 9-6-1945, since according to the second party he joined the services in the year 1945 itself, the claim of the first party workman that he showed this document regarding his date of birth appears to be more probable in the background of certain admissions given by MW1 in his cross-examination pertaining to entry with regard to his date of birth in Ex. M1 and M2. Ofcourse in Ex. M1 against the column date of birth '1927' has been mentioned. It is pertinent to note from the cross-examination of MW1 which is as follow :

"As I see from Ex. M1 first party was appointed in 1945. When he was appointed service card would have been maintained. Ex. M1 is not the service book maintained from the date of appointment. I cannot say since when Ex. M1 has been maintained. Ex. M1 has been maintained by KGMUL. Around 1962 Mysore Govt. handed over the mines to KGMUL. Ex. M1 does not show that it has been issued by KGMUL. It has been issued by Govt. of India, Nandydoorg Mines".

This material elicited in the cross-examination discloses that Ex. M1 is not a document prepared at the time of first party joining his services and it is only a subsequent record prepared on the earlier service records, therefore, in the absence of producing the earlier service records it is not possible to accept the version of the second party that initially the date of birth of the first party was declared and recorded as 1927 without specifying

the date and month. Now coming to another document produced by the second party claiming that first party has declared his date of birth as 1927 is Ex. M2. But this document which is of the Govt. of Mysore, the Kolar Gold Mining undertakings Declaration and Nomination form there is no mentioning the year of birth being '1927' and against the column No. 1 of date of birth day is blank, month is blank and year is mentioned as only '19'. Therefore, it cannot be accepted that in this document the first party having declared his date of birth as '1927'. Thus the second party having failed to demonstrate that the first party had declared his date of birth as 1927 when joining the service and the same was entered in his service records, having no reason to disbelieve the claim of the first party that his date of birth being 16-4-1931 as mentioned in the transfer certificate pertaining to him issued by the Headmaster, Municipal Higher Secondary School, Gadiyattam (NA) dated 9-6-1945.

8. Since it appears the second party argued before the Hon'ble High Court in the Writ Petition that if date of birth of the first party is to be accepted as 16-4-1931, in the year 1945 when he joined the services of the second party his age would have been not more than 14 years, as such it cannot be relied upon, in this connection the learned advocate appearing for the first party bringing to my notice the provisions of Factories Act, 1948 and Mines Act 1952 urged that even as young persons and adolescent used to be employed, for the first time in the Mines Act, 1952 it is proposed to prohibit the appointment or employment to persons below 18 years of age therefore, the arguments that may be advanced on behalf of the management that if the date of birth of the first party workman is to be taken or accepted as 16-4-1931 he would have been less than 14 years in the year 1945 when he joined the services, therefore, his claim cannot be accepted and has no force, because inter alia on behalf of the management no provision was brought to my notice even in the year 1945 when the first party joined the services there was being any prohibition for employment for a person below the age of 18 years. Therefore, only because the date of birth claimed by the first party as 16-4-1931 is accepted in the year 1945 when he joined the services he would have been not more than 14 years as such his claim that his date of birth is 16-4-1931 cannot be accepted has no force. The contention of the second party that inspite of its circulars dated 2nd December 1963 and 3rd April, 1964 wherein employees were called upon to get their date of birth corrected copy of which are at Ex. M3 and M4, the first has failed to get his date of birth corrected as such he is not entitle to claim his correct date of birth being 16-4-1931 after the order of his superannuation is also of no avail to the second party. Because as per these circulars the Superintendent/Head of the Department was to prepare

the list of all workers engaged prior to 1-1-1956 showing their names, team numbers and date of birth as recorded and put the same on the notice board giving a copy to each worker asking him to examine their date of birth as notified and then in case they dispute the same to be produced certain documents for correction. But in the instant case no copy of list prepared wherein the date of birth of the first party being entered in the service records as 1927 without specifying the date and month, is produced, only because there is no evidence to show that the first party did not apply for correction of his date of birth pursuant to the circulars at Ex. M3 and M4, it cannot be said that he accepted his date of birth being 1927. Therefore, this argument or contention put forward on behalf of the second party is of no avail as such I arrived at the conclusion that the second party is not justified in retiring the first party w.e.f. 1-1-1986 as he attains the superannuation age of 58 years on 15-4-1989 and thereby he would have been retired w.e.f. 16-4-1989.

9. In the result I pass the following award :

AWARD

The reference is allowed holding that the management of M/s. Bharat Gold Mines Ltd., is not justified in retiring the deceased first party Shri G. Muniswamy w.e.f. 1-1-1986 and that his services ought to have been continued till 16-4-1989 as per the then prevailing service rules and conditions. The second party has to work out the salary/wages that would have been payable to the first party workman from 1-1-1986 till 16th April, 1989 as if he continued in service till then and pay to his wife who has come on record as his Legal Representative after deducting the payment made to him for being continued in service by virtue of interim order passed by the Hon'ble High Court of Karnataka in Writ Petition No. 1965 and 1652/85 till 31-7-1986.

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 3683.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कोष्ठिय रिफाइनरी लिमिटेड कोचिंचिंग के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद, में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय, अरनाकुलम के पंचाट (संदर्भ संख्या 23/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-11-2012 को प्राप्त हुआ था।

[सं. एल-30011/13-14/2010-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 5th December, 2012

S.O. 3683.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 23/2010) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Kochi Refineries Ltd. (Kochi) and their workman, which was received by the Central Government on 22-11-2012.

[No. L-30011/13-14/2010-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

Shri D. Sreevallabhan, B.Sc., LL.B., Presiding Officer
(Thursday the 25th day of October, 2012/3rd Karthika, 1934)

I.D. No. 23/2010

Unions	1. The General Secretary, Cochin Refineries Workers Associations, VPP 1/427, Ambalamughal, Cochin – 682 302
	2. The General Secretary, Kochi Refineries Workers Union, Ambalamughal, Kochi (Kerala) – 682 302
	By Adv. Shri C. Anil Kumar – 2nd Union

Management	The General Manager (HRD), Kochi Refineries Limited, Ambalamughal, Kochi (Kerala) – 682 302
	By M/s. Menon and Pai

This case coming up for final hearing on 8-10-2012 and this Tribunal-cum-Labour Court on 25-10-2012 passed the following :

AWARD

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Government of India, Ministry of Labour by Order No. L-30011/13-14/2010-IR (M) dated 13-7-2010 referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of M/s. BPCL-KR in withdrawing the concessionary

supply of kerosene in violation of the prevailing practice and the assurances given at the time of merger of the erstwhile Kochi Refineries Ltd. with BPCL, without providing adequate compensation to the employees in this regard is fair and justifiable ? To what relief they are entitled ?"

2. Management is a Central Government public sector undertaking under the administrative control of the Ministry of Petroleum and Natural Gas. It was started in the year 1966 at Ambalamughal in Ernakulam District. At that time the company was known as Kochi Refineries Ltd. During 2006 it was amalgamated with Bharat Petroleum Corporation Limited in accordance with Sections 391 and 394 of the Companies Act. There are about 1400 workmen and about 500 employees in the supervisory and managerial category in the company. Right from its inception there was supply of kerosene to them at subsidized rate. It was unilaterally stopped by the management through its circular dated 3-9-2007. Stoppage of the supply of kerosene at subsidized rate has resulted in raising this industrial dispute by the two unions in this case.

3. After the receipt of the summons issued in this reference 1st union did not appear and participate in the proceeding. 2nd union entered appearance and filed claim statement with the prayer for restoration of the supply of kerosene at subsidized rate to the workmen and also making claim to get monetary value of the concession from the date of its stoppage to the date of restoration. The allegations made in support of it are that the benefit enjoyed by the workmen for a long period became a service condition and its discontinuance is in violation of Section 9A of the Industrial Disputes Act as it is a customary concession coming within 8th item in fourth schedule and that the stoppage of which without issuance of the mandatory notice is illegal. As per the terms of the scheme made at the time of amalgamation the terms and conditions of service applicable to the employees shall not be less favourable than those applicable to them prior to the effective date. The reason stated by the management for the stoppage of supply of kerosene is that it is because of the Government policy that supply of kerosene at subsidized rate is only to people who are in the Below Poverty Line (BPL) and/or having no LPG connection. The management being an industrial establishment is not bound to implement Government policy without following the statutory safeguards available to the workmen as per the provisions of the Industrial Disputes Act. They are not provided with any concession in the rates of LPG cylinders to make it as a reason for withdrawing the kerosene subsidy. The Government policy is only with regard to the supply of kerosene through Public Distribution System and hence the order dated 3-9-2007 for stoppage of supply of kerosene at subsidized rate is

unsustainable. Hence it is necessary to direct the management to restore the privilege and to pay them the monetary value of the concession illegally denied to them from the date of its stoppage to the date of its restoration.

4. In the written statement filed by the management the supply of kerosene at subsidized rate from the time of its inception in 1966 is not disputed. But it is contended that supply of 18.5 litres of kerosene per month was only to the employees staying outside the company quarters and the supply of so much quantity to those employees occupying the company quarters was bi-monthly at the public distribution system rates. The company was started at a remote area and at that time the employees were experiencing much difficulties in obtaining fuel for cooking purpose. The introduction of supply of kerosene at PDS rates was primarily to mitigate the hardship of employees of an oil company to get fuel for cooking purpose. This hardship is no longer relevant as deposit free priority double cylinder LPG connection are available to the employees. Subsequently the management had discontinued the subsidy for supply of kerosene to its employees pursuant to the policy decision of the Government of India to supply kerosene at subsidized rate only to the people who are in the below poverty line and/or having no LPG connection. The management cannot violate the Government guidelines/policies and hence it was decided to discontinue the supply of kerosene at Public Distribution System (PDS) rate from 2007 onwards. But the supply of kerosene was continued to be made available to the employees at open market rate. There is no violation of Section 9A of the Industrial Disputes Act as there was continuance of supply of kerosene at open market rate. There is no violation of the terms and conditions of service or violation of the Merger Agreement. The supply of kerosene at PDS rate no way means an entitlement or service condition. It is only a welfare measure, the continuance of which is not relevant any more in the change of circumstances. There was periodical revision in line with PDS rate in the past also. The supply of kerosene as such was not stopped. The management being a public sector undertaking coming under the Ministry of Petroleum and Natural Gas is bound to comply with the directions issued by the Government of India from time to time. Hence there is no change in the conditions of service.

5. No rejoinder was filed by the 2nd union after affording opportunity for that purpose.

6. For the purpose of deciding this reference one witness was examined from the side of 2nd union as WW1 and Exts. W1 and W2 were marked. For the management one witness examined as MW1 but no documentary evidence was adduced.

7. The points for determination are :

- (1) Whether there was supply of kerosene at subsidized rate to the employees for a long period and whether it has become a customary concession ?
- (2) Due to its discontinuance whether there is any violation of service conditions coming within the purview of Section 9A of the Industrial Disputes Act, 1947 ?
- (3) Relief and costs.

8. Point No. 1 : Admittedly there was supply of kerosene at subsidized rate to the employees of the management from the time of its inception 1966. The variance in the pleadings about it is only with regard to its periodical supply. According to the 2nd union there was supply of 18.5 litres of kerosene in every month for the employees. After denying it in the written statement management would contend that there was supply of 18.5 litres in a month only to the employees staying in the quarters and it was bi-monthly to the other employees staying outside. Even though no rejoinder was filed by the 2nd union there is specific averment in para 4 of the proof affidavit of WW1 that the employees residing in the quarters were provided with 18.5 litres of kerosene per month and those residing outside were provided with that quantity bi-monthly at concessional rate. There exists no dispute as to the supply of kerosene in the said manner. It started from the time of inception of the management company in the year 1966 and the same was continued till 3rd September 2007. All the employees were informed about its discontinuance through Ext. W1 wherein it is started that the discontinuance was owing to the Government of India policy that kerosene at subsidized rate would be extended only to people who are in the below poverty line and/or having no LPG connection. Management mainly rests on the contention that the stoppage of kerosene at subsidized rate to the employees was in compliance with the Government policy. No documentary evidence was adduced from the side of the management to prove the same. In para 7 of the written statement management would contend that it was as per the policy decision communicated by the Ministry of Petroleum and Natural Gas, Government of India vide its letter No. P-210116/07/2008-Dist. dated 10-6-2008 the supply of kerosene at subsidized rate was discontinued. It was not produced by the management. But the copy of which was produced by the union and got it marked as Ext. W2. It is regarding the allocation of SKO for distribution under the Public Distribution System for the 2nd quarter (July to September 2008) of 2008-09. As per that letter State Government/UT administrations are requested to ensure availability of subsidized kerosene meant for distribution under Public Distribution System to the targeted public for the purposes of cooking and

illumination only. It will not go to show that the monthly allocation is limited only to people below the poverty line and/or having no LPG connection. It is also pertinent to note that the stoppage of kerosene to the employees was in the year 2007 and hence it cannot be based on Ext. W2. No document was produced by the management to satisfy that there was any specific instruction to the management for stoppage of supply of kerosene to the employees at subsidized rate. In para 4 of the proof affidavit of MW1 also it is averred that it is based on the Government policy decision as to the supply of kerosene through PDS management had discontinued the supply of kerosene at subsidized rate to the employees. Even though it speaks about the Government policy decisions/guidelines no document was produced in this case to prove the same. Management also clings on Ext. W2 to satisfy that the supply of kerosene at subsidized rate through public distribution system is limited to the people below the poverty line. But it does not contain anything even to have an inference that there was any such restriction regarding the supply of kerosene at subsidized rate to the employees of the management company. If there is any document as to the Government of India policy as stated in Ext. W1, it was to be produced before this tribunal to prove its case. Even if there was any such policy decision it cannot be said that the management is entitled to have a stoppage of supply of kerosene at subsidized rate to the employees in the industrial establishment. It is not in dispute that the supply of kerosene at subsidized rate to the employees was started from the very inception of the company and it continued without any break for a very long period. There is also no dispute that all the benefits favourable to the employees continued even after amalgamation. If that be so, it can very well be said that it has become a customary concession. What is customary concession is not defined under the Industrial Disputes Act. It depends upon the facts and circumstances in each case. Long and continuous enjoyment of a benefit or privilege the stoppage of which will cause prejudice to the workmen is to be treated as a customary concession. It is not on the basis of any settlement or award the benefit was given to the employees. Management has no case that it was based on any agreement the supply of kerosene at subsidized rate was provided to the employees. There is nothing to show that on what basis such a facility was provided to the employees. From the contentions raised in the written statement it can be seen that the management itself was providing that facility from the very inception of the company and it was continuously being enjoyed by the employees for the past more than 40 years. Hence it can very well be held that it has become a customary concession.

9. Point No. 2 : As per Section 9A of the Industrial Disputes Act, 1947 no employer who proposes to effect any change in the conditions of service applicable to any

workman in respect of any matter specified in the 4th schedule shall effect such change without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected or within 21 days of giving such notice. The conditions of service for change of which notice is to be given under Section 9A are specified in the fourth schedule in the said Act. Item 8 is withdrawal of any customary concession or privilege or change in usage. The discontinuance of the benefit of supply of kerosene at subsidized rate whether has become a condition of services requires consideration in this case. It is already found that it has become a customary concession. Hence it is a case of change of service condition. In such a case it is necessary to have compliance with the requirements under Section 9A of the said Act. On the ground that it is as a part of compliance of the Government of India policy it was stopped cannot be accepted as a reason for non-compliance of the provision. In *Calcutta Electricity Supply Corporation Ltd. v. Calcutta Electric Supply Workers' Union* (1993) 1 LLJ 874 the employer-company had a scheme of giving medical benefits to its employees which was withdrawn after coming into operation of the Employees' State Insurance Act, 1948 on the ground that the medical benefits under the Act were more generous. The employees disputed this decision of the management on ground of contravention of the provision of Section 9A of the Act. In that case it was held by the Apex Court that there was nothing in the ESI Act or the regulations framed thereunder which enables the employer to withdraw the pre-existing benefits merely because the employees came to be covered by that Act. There is nothing in this case to show that there was any direction from the Government of India for the stoppage of the supply of subsidized kerosene to the employees. Even if there was any government policy with regard to the supply of kerosene at subsidized rates through PDS the management cannot put an end to the customary concession enjoyed by the workmen for a very long time. It has become a service condition and if it is to be withdrawn it requires compliance of the mandatory requirement of issuance of notice and observance of waiting period under Section 9A of the said Act.

10. Management has got a case that supply of kerosene at subsidized rate was only a welfare measure and as the supply of kerosene is continuing there is no violation of any service condition. It is the concession to have the kerosene on subsidized rate that is being taken away by the management through Ext. W1. It is illegal without compliance with the mandatory requirements

under Section 9A of the said Act. Hence it can be held that there is violation of the condition of service as envisaged under Section 9A with the stoppage of supply of kerosene at subsidized rate to the employees of the management.

11. Point No. 3 : In view of the findings on Point Nos. 1 and 2 I find that the action of the management in withdrawing the concessionary supply of kerosene to the employees is not fair and justifiable and hence it is liable to be restored. But the claim for allowing the employees to get monetary value from the date of stoppage to the date of restoration is not liable to be allowed in view of the facts and circumstances in this case. Hence the management is hereby directed to restore the supply of kerosene at subsidized rate to the employees within one month from the date of publication of this award.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 25th day of October, 2012.

D. SREEVALLABHAN, Presiding Officer

Appendix

Witness for the Workman :

WW1 — Sajeev Kumar P.P., General Secretary, Kochi Refineries Workers' Union, Ambalamughal, Cochin.

Witness for the Management :

MW1 — Saranga Kumar R., Manager (Ben. Admn.) Kochi Refineries Limited, Ambalamughal, Cochin.

Exhibits for the Workman :

W1 — Photocopy of the Notice dated 3rd September, 2007 issued by S. Vijayakumar, Dy. General Manager (HR) Bharat Petroleum Corporation Ltd., Kochi Refinery.

W2 — Photocopy of the letter dated 10th June, 2008 addressed to the Director, PPAC, New Delhi by P. Kalyanasundaram, Director, Government of India, Ministry of Petroleum and Natural Gas, Shastri Bhawan, New Delhi.

Exhibit for the Management — Nil

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 3684.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार द्वारा ब्रह्मरक्टर, नैशनल कैमीकल लैबोरेटरी, पुणे के प्रबंधनत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम व्यायालय, युपरे के पंचाट (संदर्भ संख्या 90/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-11-2012 को प्राप्त हुआ था।

[सं. एल-42011/35/2000-आई आर (डी यू)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 7th December, 2012

S.O. 3684.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2001) of the Government Labour Court, Pune as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Director, National Chemical Laboratory, Pune and their workman, which was received by the Central Government on 26-11-2012.

[No. L-42011/35/20(X)-IR (DU)]
SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, FIRST LABOUR COURT, PUNE

(Presided over by Mr. M.S. Bodhankar)

Ref. IDA. No. 90/01

Exh. No. 1

BETWEEN

The Director,
National Chemical Laboratory,
Pashan, Pune,
Maharashtra-411 008

—First Party

AND

Shri S.S. Naphade,
B-3/B-6, Chintamaninagar Co-operative,
Housing Society,
Aundh, Pune

—Second Party

REFERENCE UNDER SECTION 10(1)(C) & SECTION 12(S) OF INDUSTRIAL DISPUTES ACT

Appearances: Adv. Mr. Anil Kumar for the first party.
Adv. Mr. R.P. Shaligram for the second party.

AWARD II

(Delivered on this 29th day of August, 2012)

1. This reference is made to this Court by the Central Government, Ministry of Labour under Section 10(1) and 2(A)(d) of the Industrial Disputes Act for adjudication over the following demand:

SCHEDULE

“Whether the action of the management of National Chemical Laboratory, Pune in compulsorily retiring from service of Shri S.S. Naphade, pharmacist is legal and justified ? If not, to what relief the workman is entitled ?”

2. The second party has filed his Statement of Claim vide Ex. No. 24. It is submitted that the second party was working with the first party since 2-5-1972 as a compounder. His service was illegally terminated with effect from 29-6-95. His last draw salary was Rs. 8000/- per month. At the time of his termination his designation was a pharmacist. The first party is laboratory concern which does research activities in Chemical Science as well as in Chemical Engineering. It had issued a charge sheet dt. 29-11-94 to the second party and suspended him by order dt. 30-11-94. He submitted his reply to the charge sheet on 7-12-94. However, without considering it, the first party had decided to conduct the domestic enquiry in respect of the charge sheet dt. 29-11-94. Mr. S.N. Rai was the enquiry Officer and Dr. R.V. Choudhari was appointed as the management representative. The second party had appeared in the enquiry through his representative Mr. Prakash Khandekar.

3. It is submitted that if the enquiry had commenced on 14-2-95 and it was concluded on 17-2-95. In it, the first party had examined seven witnesses namely J. Shankarao, S.S. Khuspe, BM Khan, D.K. Kulkarni, Dr. Paul, Ratnasamy, V.P. Shiralkar and M.J. Eapen. In defence, the second party has examined three witnesses namely S.T. Gaikwad, Smt. S.S. Tenkale and B.K. Gurav. Both sides submitted their written arguments. The enquiry Officer has submitted his report and findings on 5-6-95. The second party has submitted his reply to the said findings on 16-6-95. The enquiry officer has failed to apply his mind while giving the findings. Those are totally perverse. He did not consider the evidence of the second party. There are lot of contradictions in the statements of the management witnesses which had not been considered by him. The witnesses failed to establish the alleged misconduct of the second party and still the enquiry Officer held him guilty. Relying on such perverse findings, the disciplinary authority had held him guilty and imposed the punishment of compulsory retirement. It is unjust and shockingly disproportionate. The termination order dt. 29-6-95 is illegal.

4. It is further submitted that as per the procedure prescribed under Central Service Rules, the second party

had preferred an appeal to the Director General, CSIR on 4-8-95, which was dismissed on 30-4-96 and the termination order was confirmed which is illegal. Hence the dispute was raised against it, before the Government Labour Office. The dispute could not be resolved there due to adamant attitude of the first party. The reference is thus sent to this court for adjudication. The second party has tried to get alternate employment but he could not get it. He is unemployed since his termination and he is suffering great hardship. As the order of termination is illegal, he has sought for such declaration and to reinstate him in service with continuity along with full back wages and other consequential benefits.

5. The first party has filed its written statement vide Ex. No. 40. All the adverse allegations are denied by it. It is submitted that the service conditions of the first party are governed by the Central Civil Service (Classification, Control and Appeal) CCS (CCA) Rules, as applicable to the Govt. of India employees. The second party who was in the employment of the Council for Science and Industrial Research was compulsorily retired after complying with the due process of the law i.e. issuance of charge sheet and holding of departmental enquiry in which the enquiring authority found him guilty of serious misconduct.

6. It is submitted that the second party was working with the first party as a Grade-II (4) employees and performing the work of a pharmacist in the medical centre of the first party meant for its employees and their families. He was governed by the provisions of CCS (CCA) Rules. He was charge sheeted on 29-11-94 for serious misconduct. The charge against the second party was that while the sensitive experiments were going on in the laboratory during working hours, he led a group of 25 persons shouting slogans in the premises of the catalyst division where dangerous experiments were in progress. He was also carrying stick. He misbehaved with the then Dy. Director of the first party. The second party was issued with a charge sheet and pursuant to the said charge sheet, a departmental enquiry was conducted against him wherein he was given full opportunity to defend himself. After conclusion of the inquiry, the Inquiring Authority found him guilty of the misconduct. On receipt of the report the Disciplinary authority imposed an order of compulsory retirement on the second party. The second party could have been dismissed from service, however taking a sympathetic approach, it was decided to award him compulsory retirement so as to enable him to get other benefits. There is no justification of the second party to challenge his compulsory retirement. The provisions of the Central Civil Service (Classification, Control and Appeal) CCS (CCA) Rules, are strictly followed. The second party was found guilty of grave and serious misconduct. There was no question of condoning his misconduct. However, taking a lenient view, he was awarded compulsory retirement. It is not a punishment. The first party has not

committed any illegality in imposing the order of compulsory retirement. It has thus sought for rejection of this reference.

7. As per the finding recorded for issue no. 2 the enquiry conducted against the second party by the first party is held to be legal, fair and proper and hence now the remaining issues arise for my determination and findings against them are recorded for the reasons that follow :

Issues	Findings
3) Whether the charge of misconduct levelled against the workman (second party) is proved to the satisfaction of the Tribunal by acceptable evidence ?	In the affirmative
4) Whether the punishment imposed is shockingly disproportionate to the misconduct proved ?	In the negative
5) Whether the second party is illegally terminated from service by the first party ?	In the negative
6) Whether the second party is entitled to get the relief as sought ?	In the negative
7) What order ?	As per final order

REASONS

8. The second party has examined himself vide Ex. No. 86. Whereas the first party has examined Shailesh Kumar vide Ex. No. 88. The argument advanced by Ld. Adv. Mr. Shaligram for the second party and Ld. Adv. Mr. Anilkumar for the first party is heard. The enquiry papers filed vide Ex. No. 83 are perused.

AS TO ISSUE NOS. 3, 4 and 5 :

9. The issue nos. 3 and 4 are discussed together for the purposes of brevity. It needs to be seen as to whether the charge of misconduct levelled against the workman (second party) is proved satisfactorily by acceptable evidence and whether the punishment imposed is shockingly disproportionate to the misconduct proved.

10. It is not in dispute that the second party was issued with the charge sheet and inquiry was held against him. The inquiry Officer had submitted his inquiry report and based on that report the first party had compulsorily retired the second party from the service.

11. In his evidence in the Court, Mr. Naphade has stated about issuance of the charge sheet to him and about his suspension by the suspension order dated 30-11-1994. He had replied the charge sheet on 7-12-1994. However, without considering his evidence, the enquiry has proceeded. He stated that Mr. Rai was the Enquiry Officer, Mr. R. V. Choudhary was the Management Representative

and his representative was Mr. Prakash Khandekar. As per his version during the course of enquiry the first party had examined seven witnesses in J. Shankarao, S.S. Khuspe, BM Khan, D.K. Kulkarni, Dr. Paul, Ratnasamy, V.P. Shiralkar and M.J. Eapen. The second party had examined three witnesses namely S.T. Gaikwad, Smt. S.S. Tenkale and B.K. Gurav. He stated about the conduct of the enquiry and submitted that on its conclusion the enquiry officer had submitted his findings on 3-7-1995 to which the second party has submitted his reply. He stated that the findings of the Enquiry Officer are totally erroneous and he had not considered the evidence brought on record by him and his written argument and though there was no evidence against him to prove the alleged misconduct still he was held guilty. He stated that accepting such findings the management had illegally terminated him from service. During his cross-examination, he denied the suggestions given to him. He admitted that in the order giving him the compulsory retirement, it is mentioned that as he had completed 23 years of service; by considering his past record, he had been given the compulsory retirement. As per his contentions since he was compulsorily retired he did not get any other job.

12. In this regard the witness for the first party Mr. Shailesh Kumar had stated that the second party was issued with charge sheet for serious misconduct whereby he was charged of intimidation and coercion to Dr. Khuspe, a scientist working with the first party by collecting a mob and staging an illegal assembly in the premises of the first party. He was also charged to the effect that he had along with his unruly group entered the premises of the catalyst division and shouted slogans which continued despite the request of the Deputy Director of the first party and the shouting grossly affected the experiments in the laboratory and created accident prone environment there, capable of endangering the life and limb of the innocent and sabotaging the property of the first party. He also stated about conduct of the enquiry and holding of the second party guilty by the enquiry officer in his enquiry report. It is submitted that on going through all the material on record, as the misconduct of the second party was very serious, as he had conducted a noisy demonstration during the working hours by collecting a mob in the premises of the first party. Mr. Shailesh Kumar has stated that the witnesses in the enquiry included eminent scientists who had no grudge or animosity against the second party. He stated that the cross-examination of these witnesses did not change the evidence and the misconduct is duly proved of the second party and hence, the disciplinary authority in exercise of his powers imposed the punishment of compulsory retirement.

13. In his cross-examination Shailesh Kumar has stated that he had no personal knowledge of the incident but he was deposing as per record. He was not in service when the incident had happened as he had joined NCL on

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2-1-07. He was unable to state as to which past record of Mr. Naphade considered by the punishing authority. Here the past record is seen to have been checked which has resulted in taking a lenient approach resulting in compulsory retirement of second party for proved serious misconduct. Here it is observed that holding of the enquiry and giving of the findings by the enquiry officer, holding the second party guilty is not a position in dispute.

14. The second party has been charged that :

ARTICLE I

Shri S.S. Naphade while working as Group II (4) during the period from 2-5-1972 till date committed misconduct in as much as on 10-10-1994 at about 2.30 p.m. he intimidated, coerced and pressurised Dr. S.S. Khuspe, Scientist to perform certain unwilling and unpleasant acts during working hours and thus failed to maintain devotion to duty and thereby contravened the provisions of Rule 3(1) (ii) & (iii) of the C.C.S. (Conduct) Rules, 1964 as made applicable to the employees of CSIR.

ARTICLE II

That the said Shri S.S. Naphade while functioning the aforesaid office and during the aforesaid period committed misconduct in as much as on 10-10-1994 at about 3.00 p.m., he notwithstanding the advice the instructions of Dr. Paul Ratnasamy, Head Catalysts and Inorganic Chemistry Division and Scientist in Director's Grade, continued to cause commotion and disturbance by leading a group of about 23 slogan shouting persons in the corridor of Catalysts Division, where highly dangerous experiments were in progress at that time and thereby endangered the lives of the scientists of the Catalysts Division as also the property of the Laboratory. Shri Naphade thus failed to maintain devotion to duty and acted in a manner unbecoming to a Council employee and thereby contravened the provisions of Rule 3(1) (ii) and (iii) of the C.C.S. (Conduct), Rules, 1964 as made applicable to the employees of the C.S.I.R.

15. The second party has denied this charge. What evidence is gathered on record in this regard needs to be seen. While going through the evidence i.e. recorded in the enquiry it is seen that the first management witness Mr. Vijay Shankarao is solely a witness to the two documents i.e. the appointment letter of the second party and his assessment promotion to Group II(4).

16. The second witness Dr. Khuspe was actually involved as a victim in the incident as per the case of the management. In his examination in chief, the enquiry officer read him over the statement 'dt. 11-10-94 and he had confirmed the same as true and correct. In his cross-

examination he stated that never before the incident of 10th October, 1994, the second party had talked with him. He specifically stated that the incident took place on Monday, 10th October, 1994 at about 2.30 p.m. as Mr. Naphade had entered his room and asked him to come out to garland Mr. Gaikwad who had come with a lease of new life. Mr. Khuspe has stated that Dr. Khan was with him at the relevant time. Mr. Khan in his evidence has affirmed his presence on the spot at the time of the incident. Dr. Khuspe has stated that he was reluctant to go out, though asked by the second party being busy discussing scientific problems and as he was not an administrative authority to discharge such functions. As per his version the second party alone entered in his room. Mr. Khuspe has maintained that when he expressed his reluctance to come out the second party started talking loudly became violent and started banging the stick on the floor which forced him to come out of fear. He maintained that the second party had behaved in such fashion. Mr. Khuspe has stated that the behaviour of the second party was so wild that he could not even think of as to whom he had to consult. He stated the length of stick as 3 feet and its diameter to be round 2 and $\frac{1}{2}$ inches. Though Mr. Khuspe could not state as to how many occasions the stick was banged on the floor. He stated that it was banged on several occasions and it was about 10 minutes after the second party had entered his room that he had decided to follow him seeing his wild gestures. He was unable to tell if there were any scratches on the floor.

17. During the cross-examination of Dr. Khuspe he had been asked questions relating to Gaikwad whereby he has admitted about attempt to commit suicide by Mr. Gaikwad and that Gaikwad was doing his domestic work after office hours and on off days for which he used to pay him. He denied that Gaikwad had to work after 9 p.m. and also during working hours.

18. Here it is observed that the attempt to commit suicide by Mr. Gaikwad by taking poison is stated to be the cause of the incident mentioned in the charge sheet. In the cross-examination of Dr. Khuspe he had been given several suggestions regarding happening of such incident due to the work Gaikwad was required to do with him. Dr. Khuspe had stated about his fright while such incident as mentioned by him, in his evidence had taken place and he stated that there was slogan shouting before and after he was made to talk by the second party. He stated that the second party had asked him to say as he was told to speak and he was also asked to say what the second party had asked him to say that he would not ask Gaikwad house work during office hours and he seeks pardon from Mr. Gaikwad. As per his version, though he kept quiet the second party had repeated this in still louder tone and as he was frightened he repeated those words as the second party was asking him to say.

19. Thus, from this evidence of Dr. Khuspe it is seen that there is no rebuttal of his evidence regarding happening of the incident. Nothing has come on record to disbelieve his version. Same is the case with the third Management witness Dr. B.M. Khan who stated that he was present at the time of happening of incident for which the second party is charged and maintained that the second party had entered the room of the scientist and terrorized him very badly and compelled him to do an act which the scientist would never do of his own and forced him to apologize to Mr. Gaikwad—a worker which badly affected the psyche and the nervous system of the scientist which was visible from his behaviour after the incident. During his cross-examination he maintained that Dr. Khuspe has not apologized of his own and he had apologized out of fear. He stated that the behaviour of the second party was good with him. This version shows that this witness was holding no animus against the second party.

20. Dr. Khan has also maintained that 50 persons had been shouting slogans on the day and at the time of the incident mentioned in the charge sheet. He stated that from the faces of the scientists there he could visualize nervous break downs and adverse effects in their sights. He was unable to state about hospitalization of Mr. Gaikwad stating that he had been very busy with his scientific work and hence, did not know. He stated that at the time of the incident. He did not consider it necessary to inform the security thinking that by the time he would speak to the security and they would come to the situation, he would get in a better position to come to the rescue of Dr. Khuspe. There is substance in this version of Dr. Khan. He has stated that regarding the incident that happened in the room, he did not consider that the situation warranted his intervention. But considering the gathering and tension in the corridor he was himself frightened and could not decide to intervene. Nothing has come which would show any contradictions in his version to that of Dr. Khuspe. In his re-examination, Dr. Khan was asked how he felt after the two incidents on which took place in the room of Dr. Khuspe and other outside. He stated that he was very frightened.

21. The fourth management witness Dr. Kulkarni is also an eye witness to the happening as per management case. He stated that after coming from lunch on 10-10-1994, he had gone to the library for some reference work and he left the library at about 2.30 p.m. It took him about 5 to 7 minutes to reach PTC Division and when he entered the division he saw 40 to 50 peoples shouting slogans and Dr. Khuspe being led by the second party towards the lounge of PTC Division. He stated that the second party was talking to Dr. Khuspe in high pitch and he asked Dr. Khuspe to garland to Gaikwad and as Dr. Khuspe was unwilling, the second party who had held lathi in his hand, banged it on the floor and created terror in

the atmosphere which compelled Dr. Khuspe to do the act and then the second party had compelled Dr. Khuspe to repeat certain words derogatory and humiliating to Dr. Khuspe who had initially declined but when the second party returned by postures and swayed the lathi in his hand and threatened Dr. Khuspe, he uttered some words. He stated that Dr. Khuspe had then repeated that he was asked to and then there was slogan shouting and then Dr. Khuspe left the scene.

22. Mr. Kulkarni had stated that Dr. Khuspe was asked to apologize to Mr. Gaikwad and he was at a distance of 18 to 20 feet from the spot. He admitted that Gaikwad was working under Dr. Khuspe. He was unable to tell the reason for hospitalization of Mr. Gaikwad. He stated that he left the place after the mob disappeared. He also stated that he did not inform the DOA, AO and/or the Security Officer about the incident as he was dumb struck for quite some time after the incident. He stated of informing to the authorities on the next day. He stated that the second party had asked Dr. Khuspe to garland Mr. Gaikwad. He stated that the lathi was 3 feet long and about 1.5 to 2 inches in diameter. The length of the lathi stated by him and Dr. Khuspe is same. He also stated that the slogans were shouted as Bhartiya Kamgar Sangh Zindabad and Kamgar Ekta Zindabad and few more. He stated that it would be not be derogatory and humiliating if a senior scientist of his own accord apologizes to a person holding lower position but to force a senior scientist to apologize by act of terrorizing before a whole crowd is derogatory and humiliating.

23. The management witness Ratnasamy also stated that he had come out of his office after hearing noise out of his office. He stated that the behaviour of Mr. Naphade around 3 pm on 10-10-1994 had caused undue disturbance to the activities of the division in the preparation of catalysts and his behaviour would have resulted in a major damage to the property of NCL and lives of NCL employees. He maintained that the behaviour of the second party gave impression that he wanted to discuss the activities and the consequences of his activities would have endangered public life. As per his version he was the eye witness to the incident and the catalyst synthesis activities and such operations were going on in the division which would have caused explosions if the parameters have deviated from the preset values. He stated that such a thing can happen if the attention of the scientist is diverted elsewhere. He stated of having stopped the experiments in catalyst synthesis division due to the disturbance caused as the behaviour of the mob could not have been predicted when it was in an excited stage. There is definite substance in this version of Ratnasamy. There is no rebuttal of his version regarding the stopping of the work. That the undergoing work was required to be stopped shows the gravity of the happening. His version shows that he was the eyewitness to the incident and supported the versions of the earlier

management witnesses. Mr. Shiralkar has also supported the version of Dr. Khuspe and other management witnesses. The only discrepancy in the version of the management witnesses is the number of the persons who had accompanied the second party. He stated that those had been about 20 to 25 peoples. So is the version of Mr. Ratnasamy. There has been some difference in stating the number of persons who accompanied the second party. The management has issued charge sheet which makes a mention of around 25 persons whereas in the version of Dr. Khuspe, Khan and Kulkarni there is mention of 40 to 50 persons. I.d. Adv. Mr. Anil Kumar has argued that probably in a fear of the happenings the victim could not have counted the number of persons and hence, inability to tell exact number is not fatal. Ld. Adv. Mr. Shaligaram has argued otherwise. I find substance in the submission of Ld. Adv. Mr. Anil Kumar.

24. Mr. Shiralkar has maintained that the second party has stick in his hand and there had been slogan shouting which was going on. He has stated that he had not precisely count the number of persons gathered there in the mob. With his such clarification, I observe that there is no contradiction in his version to that of the other management witnesses.

25. Dr. Eapen has stated that he has seen the second party in a group of people on the day of incident in the afternoon who had been shouting slogans and though Mr. Ratnasamy had tried to stop them they did not stop. He categorically stated that he had seen the second party in the mob and as per directions of Mr. Ratnasamy they had stopped the experiments. He has categorically stated that the pressure and the temperatures of the mixtures had reached a level which needed continuous attention and his attention was distracted following the noise outside.

26. Though there is some difference in the versions of the management witnesses about the number of the persons accompanying the second party, it is seen that there is no rebuttal of their remaining version which is consistent and it shows that the incident for which the second party has been charged had taken place. Thus, mere inability to state about the number of persons accompanying the second party is not found fatal to the cause of the management.

27. Regarding the defence evidence, Mr. Gaikwad had been the first defence witness. He stated that Dr. Khuspe had made him to do the works of gardening as a gardener and also bringing the gas cylinders and to take some articles from NCL to his house. Mr. Gaikwad had stated that he had thus taken poison. He stated that after returning from the hospital on 10th October, he went to the house of second party and along with him went to his superiors and while going, his friends has enquired about his health and when he along with second party had gone to Dr. Khuspe, he had come out and enquired about his

health and put hand and tendered apology. In his cross examination he has stated that he did not state anybody about the ill treatment given by Dr. Khuspe.

28. Gaikwad had been questioned by the enquiry officer that prior to taking medicine he had wrote a two line chit wherein he had only mentioned about corruption of Mr. Joshi and Mr. Shclar. The second party has tried to portray that due to the ill treatment of Dr. Khuspe, the said Mr. Gaikwad had tried to commit suicide. If that was so, then it ought to have formed part of the suicide note. However, there is no such mention and the story stated by Mr. Gaikwad is an afterthought argued Ld. Adv. Mr. Anil Kumar. Though Ld. Adv. Mr. Shaligram has argued otherwise, I observe that if the main grievance had been about the action of Dr. Khuspe its mention would be there in the note. It is however, not found there. Mr. Gaikwad has been questioned that Dr. Paul Ratnasamy had enquired about him and what did he exactly said. Gaikwad has replied that he was speaking to the second party and said nothing to him. He admitted that the statement made by him earlier was untrue. This shows that Mr. Gaikwad had spoken a lie in the statement made by him. If this is so, then the credibility of the version of Mr. Gaikwad is in doubt.

29. Ld. Adv. Mr. Anil Kumar has placed reliance on the authorities in :

(i) Employers, in relation to the management of West Bokaro Colliery of M/s. TISCO Ltd., V/s. Concerned Workman, Ram Pravesh Singh; reported in 2008 II CLR 220; wherein it is held that,

"the standard of proof of beyond reasonable doubt which is required to be proved in criminal cases whereas in the domestic enquiry and in Civil Courts, the standard of proof is of preponderance of probability."

(ii) Another authority relied upon is Y.P. Sarabhai V/s. Union Bank of India & Another; 2002 II CLR 856; wherein it is held that,

"3. General :

(1) Every Officer Employee shall at all times takes all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a Bank Officer.

(2) Every Officer Employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

(3) No Officer Employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his superior official.

(4) Every Officer Employee shall takes all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority."

30. PW2 Shardabai said she had not seen anybody quarrelling and nobody accompanied the second party and Mr. Gaikwad. Then in re-examination she was questioned that there was some difference in the time stated by her. She stated that she was illiterate and could not see the watch. With her such version, there is definitely a doubt regarding the time stated by her to be correct or not. Though the defence witness No. 3 Mr. Gurav has stated that no such incident has taken place in his cross examination he stated that he had no knowledge of the incident.

31. On this evidence the enquiry officer has submitted his report vide Exh. No. 90 and considered all the evidence that has been tendered by the witnesses during the course of the enquiry and considering the evidence of Dr. Khuspe and other management witnesses and defence evidence along with the defence statement given by the second party. He has on analysis of this evidence observed that the evidence of the management witnesses had been trustworthy whereas he has also observed that,

"Both the Charged Officer and Shri Gaikwad have admitted presence of several employees in PTC Division. The statement of Smt. Tenkale that she did not see any one else besides these two persons contradicts the statement of the Charged Officer. Shri Gurav saw, Shri Gaikwad and Dr. Paul Rainasamy only. He did not see other employees, not even the Charged Officer. The testimony of DW-2 and DW-3 is therefore, rejected as unworthy of reliance.

On the other hand, the statement of Dr. Khuspe has been corroborated by two senior scientists, Dr. BM Khan and Dr. D. K. Kulkarni. Their testimony both written and oral clearly establishes that the Charged Officer had intimidated, coerced and pressurised Dr. Khuspe to perform those unwilling and unpleasant acts during working hours."

The findings of the enquiry officer are based on the evidence recorded during the inquiry.

32. While going through the order passed by the punishing authority, it is seen that the punishing authority has observed going through the enquiry report that,

"(1) I am, therefore, convinced that the evidence on record establish unambiguously the misconduct against the charged officer. Considering the nature of evidence, I am of the opinion that there is no scope for any justification in respect of the conduct of the charged officer. I am also of the opinion that the charges proved are of grave nature. I consider the misconduct of the charged officer as grave due to the general discipline involved in it. I am satisfied that the charge sheeted officer is given full opportunity and all procedures required under the rules have been complied with.

In view of the above, considering the gravity of the offence and considering all circumstances, I hold the charge officer guilty of the misconduct mentioned in Memo dated 29-11-1994. I hold him guilty of violation of Rule 3(1), (ii) and (iii) of C.C.S. (C.C.A.) Rules, 1965. Considering the gravity of offence and further considering the fact that the misconduct of the charged officer had disastrous effect on the general discipline, I am inclined to pass the order of removal on the charged officer. However, in view of the fact that since the charged officer has put in 23 years of service with NCL and further in view of his past record, I decide to pass the following order :

Considering the nature and gravity of the misconduct committed by Shri S.S. Naphade, Group II (4) and facts and circumstances of the case, I hold that his retention in service is not desirable.

I, Dr. R.A. Mashelkar, Director, NCL, in exercise of the powers conferred on me by Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, therefore, hereby impose of Shri S.S. Naphade, Group II(4) the penalty of compulsory retirement from service with immediate effect."

33. The second party is held guilty as per provisions of Rule 3(1) (ii) and (iii) of the CCS (Conduct) Rules, 1964. Rules 3 (1) (ii) and (iii) of the CCS (Conduct) Rules, 1964 lays down that,

- (1) Every Government servant shall at all times :
 - (i) maintain absolute integrity;
 - (ii) maintain devotion to duty; and
 - (iii) do nothing which is unbecoming of a Government servant.

5. I am satisfied that :

- (a) procedure laid down under CCS (CCA) Rules, as made applicable to Council employees has been followed;
- (b) findings of disciplinary authority are warranted by the evidence on record; and

(c) adequate opportunity has been provided to the charged officer to defend his case.

6. The misconduct committed by Shri Naphade was quite serious and unbecoming of a Council employees; as besides being highly subversive of discipline his act of leading demonstration inside the NCL premises during working hours created disturbance in research work that highly sensitive experiments/laboratory work then in progress had to be stopped midway to avoid any possible mishap or explosion.

34. Ld. Adv. Shri R.P. Shaligram has argued that in the enquiry report the enquiry officer has given a finding that both the charges stand established. But the punishing authority has held him guilty for violation of Rule 3(1)(ii)(iii) of CCS (CCA) (Rules, 1965). Ld. Adv. Mr. Shaligram has argued that but the provisions of 3(1)(ii)(iii) of CCS (CCA) (Rules, 1965) does not describe any punishment and hence, punishment is imposed under wrong Section. Ld. Adv. Mr. Anil Kumar has on the other hand argued that the punishment is imposed under CCS (Conduct) Rules for which the charge sheet was issued to the second party and the mention of CCS (CCA) Rules in the order of the punishing authority could be out of inadvertence and as the enquiry has been held for the charge U/S. 3(1) (ii) and (iii) of the CCS (Conduct) Rules the enquiry officer has held charges proved under this Annexure 1 of the charge sheet and hence, such mention in the order of the punishing authority is not harmful for the first party.

35. Ld. Adv. Mr. R.P. Shaligram has argued that the enquiry officer had conducted the biased enquiry solely with intention to hold the second party guilty and hence, by taking personal interest he had asked questions by himself to the witnesses to cover up the admissions given by them in their cross examination. He argued that the defence witness have clearly shown that no incident as mentioned in the charge sheet had taken place and there is no reason to hold the second party guilty for the same. He also argued that if it is stated that 40 to 50 persons had gathered on the spot and if it is so why action is not taken against them. He argued that some management witnesses have stated that 40 to 50 persons have gathered on the spot whereas some of the other witnesses have stated that 20 to 25 persons had gathered on the spot shouting slogans thus there is contradictory evidence in this regard. He questioned as to what action had taken against others who had also given slogans.

36. On the other hand Ld. Adv. Mr. Anilkumar has argued that the charge sheet has been given for the serious misconduct committed by the second party and the management witnesses have given trustworthy evidence. The second party had been union leader who had carried out a 'marcha' in the office of the first party and committed the misconduct as described in the charge sheet and the recorded evidence in the enquiry proves the same. He

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argued that there was no reason to give false evidence by the management witnesses against the second party as it is seen that they had been on good terms with him. He argued that the misconduct of creating an unlawful assembly giving slogans and intimidating the superior officers are such actions which show serious misconduct and hence, the punishment of dismissal should have been imposed. However, the management had still considered the past record of the second party and compulsorily retired him from service giving all benefits due to him. He argued that thus, the management has not committed any illegal act and under such circumstances there is no reason to interfere with the action taken by the management.

37. Here it is observed on going through the evidence recorded in the enquiry that the testimonies of the first party witnesses have not shaken in their cross-examination and those are found sound. Such is not the case with the defence evidence. Thus the misconduct proved before the second party of insubordination, preparing an unlawful assembly and creating riotous atmosphere in the premises of NCL and causing fright in the minds of the witnesses present and putting the life of people and property of the first party in a dangerous situation. The second party has obviously not acted for his individual cause. He is seen to have acted for the cause of somebody else. However, the way chosen for such action is wrong as the victim had the opportunity to mention about his grievance if any regarding Mr. Khuspe to the superior officer and seek redressal of his grievance by adopting due process of the law. The second party had not done so. It is observed that the act of the second party is an act of grave misconduct subversive of discipline. Ld. Adv. Mr. Anil Kumar has argued that no employer can afford to have an employee who commits misconduct as grave as this and the punishment of dismissal from service would be the appropriate punishment but still by showing leniency the second party is compulsorily retired from service. Ld. Adv. Mr. R.P. Shaligram has on the other hand argued that the punishment of dismissal from service is most disproportionate punishment. He argued that no misconduct is in fact proved against the second party.

38. Considering the evidence and rival argument, I observe, conclude and hold that the misconduct proved against the second party is a grave misconduct and for such misconduct the punishment imposed of compulsory retirement is not disproportionate punishment and in fact it is the most appropriate punishment that could have been imposed considering the gravity of charge proved. The act proved to have been committed by the second party is a serious act of misconduct and for such act, the punishment of dismissal is the most appropriate punishment. However, it is seen that by not taking such a harsh step, the first party has in fact taken a lenient view considering the past record of the second party and it does not require any intervention as definitely the second

party has come out unscratched. Considering all these aspects, I observe, conclude and hold that the misconduct of the second party is proved to the satisfaction of this court by acceptable evidence and the punishment imposed by the first party is not shockingly disproportionate and thus when the action of the first party is legal and justified, I conclude and hold that the second party has failed to prove that he has been terminated illegally from the service by the first party. With this view of the matter, holding it accordingly I answer issue no. 3 in the affirmative and issue nos. 4 and 5 in the negative.

As to Issue No. 6 :

39. As the second party has failed to prove that he has been terminated illegally from service by the first party, I observe, conclude and hold that the second party is not entitled to get any relief. With this view of the matter, holding it accordingly, I answer issue no. 6 in the negative.

As to Issue No. 7 :

40. In view of the findings recorded for issue no. 6, I observe, conclude and hold that the present reference deserves to be answered in the negative and thus deserves to be rejected. In the circumstances of the matter, no order as to cost. Holding it accordingly, I proceed to pass the following order :

ORDER

(1) The reference is rejected.

(2) No order as to cost.

Date : 29-8-2012

Pune

M.S. BODHANKAR, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2012

का.आ. 3685.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा—1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 01 जनवरी, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपर्यंथ हरियाणा राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

क्रम संख्या	राजस्व गांव	हृदबस्त संख्या	जिला
(1)	(2)	(3)	(4)
1.	बादशाह पुर	87	गुडगांव
2.	धुनेला	182	गुडगांव
3.	अलीपुर	180	गुडगांव
4.	रायसीना	184	गुडगांव

(1)	(2)	(3)	(4)
5.	घमडोज	179	गुडगांव
6.	सहजावास	170	गुडगांव
7.	धनबापुर	51	गुडगांव
8.	बजधेरा	61	गुडगांव
9.	दौलताबाद	53	गुडगांव
10.	धरौली खुर्द	106	गुडगांव
11.	धरौली कलां	48	गुडगांव
12.	कार्टरपुरी	63	गुडगांव
13.	इस्लामपुर	97	गुडगांव
14.	कनाही	73	गुडगांव
15.	बेगमपुर खटोला	101	गुडगांव
16.	बजीरपुर	115	गुडगांव
17.	हरसरू	107	गुडगांव
18.	हयातपुर	114	गुडगांव
19.	ढोरका	120	गुडगांव
20.	पतली हाजीपुर	34	गुडगांव
21.	भोरा खुर्द	136	गुडगांव

[सं. एस-38013/37/2012-एस.एस. 1]

नरेश जायसवाल, अवर सचिव

New Delhi, the 17th December, 2012

S.O. 3685.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st January, 2013, as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and

Chapter-V and VI [except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Haryana namely :—

Sr. No.	Name of Village	Habba	District
1.	Badshahpur	87	Gurgaon
2.	Dhunela	182	Gurgaon
3.	Alipur	180	Gurgaon
4.	Raisina	184	Gurgaon
5.	Ghamdoj	179	Gurgaon
6.	Schjawas	170	Gurgaon
7.	Dhanwapur	51	Gurgaon
8.	Bajghera	61	Gurgaon
9.	Daulatabad	53	Gurgaon
10.	Garauli Khurd	106	Gurgaon
11.	Garauli Kalan	48	Gurgaon
12.	Karterpuri	63	Gurgaon
13.	Islampur	97	Gurgaon
14.	Kanahi	73	Gurgaon
15.	Begampur Khatola	101	Gurgaon
16.	Wazirpur	115	Gurgaon
17.	Harsaru	107	Gurgaon
18.	Hayatpur	114	Gurgaon
19.	Dhorka	120	Gurgaon
20.	Patli Hazipur	34	Gurgaon
21.	Bhora Khurd	136	Gurgaon

[No. S-38013/37/2012-S.S.I.]
NARESH JAISWAL, Under Secy.